

No. 19-35427

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK E. GABLE,

Petitioner-Appellee,

v.

MAX WILLIAMS,

Respondent-Appellant.

APPELLANT'S EXCERPTS OF RECORD VOLUME I

Appeal from the United States District Court
for the District of Oregon

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APPELLANT'S EXCERPTS OF RECORD VOLUME I

Pursuant to Circuit Rule 30-1.7, appellant submits the following Appellant's Excerpts of Record, as indexed below.

INDEX

<u>Clerk's Docket #</u>	<u>Document</u>	<u>E.R. #</u>
170	Notice of Appeal	1
169	Judgment	4
168	Opinion & Order	6
61	Amended Petition for Writ of Habeas Corpus	100

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRANK E. GABLE,

Petitioner-Appellee,

v.

MAX WILLIAMS,

Respondent-Appellant.

U.S.C.A. No. 3:07-cv-00413-AC

NOTICE OF APPEAL

Notice is given that respondent, Max Williams, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment entered on April 18, 2019, by the Honorable John V. Acosta of the United States District Court for the District of Oregon.

E. R. -2

Respectfully submitted,

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E. R. -3

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2019, I directed the Notice of Appeal to be electronically filed with the Clerk of the Court for the United States District Court for the District of Oregon by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRANK E. GABLE.

Case No. 3:07-cv-00413-AC

Petitioner,

JUDGMENT

v.

MAX WILLIAMS,

Respondent.

ACOSTA, Magistrate Judge.

Based on the Record,

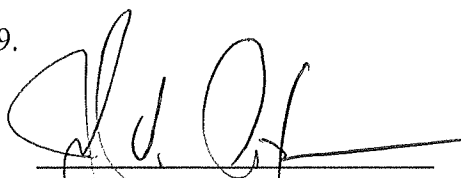
For these reasons, Gable's Amended Petition for Writ of Habeas Corpus (ECF No. 61) is GRANTED IN PART and DENIED IN PART. The Amended Petition is GRANTED on the bases that the trial court erred in excluding evidence of third-party guilt and that trial counsel provided ineffective assistance in failing to assert Gable's federal due process rights in the face of the trial court's error. The Amended Petition is DENIED on the remaining claims for relief, including

E. R. -5

Gable's claim that trial counsel was ineffective in failing to advise Gable of his *ex post facto* rights and in failing to raise an *ex post facto* objection to the sentencing options at the penalty phase, as well as Gable's free-standing claim of actual innocence.

Gable shall be released from custody unless the State of Oregon elects to retry him within 90 days of the date of this order. A certificate of appealability is GRANTED as to all grounds for relief discussed herein on the basis that Gable has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

DATED this 18th day of April, 2019.



John V. Acosta
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRANK E. GABLE,

Civil No. 3:07-cv-00413-AC

Petitioner,

OPINION AND ORDER

v.

MAX WILLIAMS,

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ACOSTA, Magistrate Judge:

In June 1991, a jury convicted Frank Gable (“Gable”) of six counts of Aggravated Murder and one count of Murder. The next month, at the conclusion of the penalty phase, the trial court sentenced Gable to life in prison without the possibility of parole. Gable has been serving his life sentence since that time.

Gable filed this habeas corpus petition under 28 U.S.C. § 2254 in March 2007 and amended his petition in March 2014 to add a claim of actual innocence. Although he exhausted his direct appeals and his post-conviction relief (“PCR”) process, nineteen of Gable’s twenty grounds for habeas relief are procedurally defaulted, but Gable urges this court to excuse his defaulted claims under the “actual innocence” standard that the Supreme Court established in *Schlup v. Delo*, 513 U.S. 298 (1995). This is a stringent standard satisfied “only in the extraordinary case.” *House v. Bell*, 547 U.S. 518, 538 (2006) (concluding petitioner “has made the stringent showing required by this exception”) (internal quotation marks omitted).

This is such a case. Gable has presented a colorable claim of actual innocence. Accordingly, the court GRANTS IN PART and DENIES IN PART Gable’s Amended Petition for Writ of Habeas Corpus (ECF No. 61).¹

SUMMARY OF PROCEDURAL BACKGROUND

On January 17, 1989, the director of the Oregon Department of Corrections, Michael Francke, was stabbed to death. An Oregon State Hospital (“OSH”) security guard discovered his body on the covered North Porch of the Dome Building, which sits on the OSH grounds in Salem,

¹ All parties have consented to allow a Magistrate Judge to enter final orders and judgment in this case in accordance with Fed. R. Civ. P. 73 and 28 U.S.C. § 636(c).

Oregon. Following an extensive investigation, in April 1990, a Marion County grand jury indicted Gable on six counts of Aggravated Murder and one count of Murder.² Resp. Exh. 103. The trial court appointed Robert Abel and John Storkel to represent Gable.

The case proceeded to a jury trial which lasted approximately four months, beginning in March 1991 and ending in July 1991. At the conclusion of the trial, the jury found Gable guilty on all counts. Resp. Exh. 104. Following a penalty phase proceeding, the trial court sentenced Gable to life imprisonment without the possibility of parole. Resp. Exh. 104.

Gable appealed, and in a written opinion the Oregon Court of Appeals affirmed the trial court's judgment and sentence. *State v. Gable*, 127 Or. App. 320, 873 P.2d 351 (1994). The Oregon Supreme Court denied review. *State v. Gable*, 319 Or. 274, 877 P.2d 1202 (1994).

Gable then sought state post-conviction relief ("PCR"). Following an evidentiary hearing, the PCR trial court denied relief. Resp. Exh. 345. Gable appealed. The Oregon Court of Appeals granted relief on one claim of ineffective assistance of trial counsel, and remanded the case to the PCR trial court to determine whether Gable suffered prejudice. *Gable v. State*, 203 Or. App. 710, 126 P.3d 739 (2006). The Oregon Supreme Court denied review of this decision. *Gable v. State*, 341 Or. 216, 140 P.3d 1133 (2006).

On remand, following a second evidentiary hearing, the PCR trial court found Gable did not demonstrate prejudice and denied all relief. Resp. Exh. 371. On appeal, the Oregon Court of

² Count I alleged that the murder was related to the performance of Francke's "official duties." Count II alleged that he was killed during an attempted first-degree robbery. Counts III and IV alleged that Francke was killed to conceal the commission of, and the identity of the perpetrator of, a first degree robbery. Counts V and VI alleged that Francke was killed to conceal the commission of, and identity of the perpetrator of, an attempted theft. Count VII alleged intentional murder.

Appeals affirmed without opinion. *Gable v. State*, 243 Or. App. 389, 256 P.3d 1099 (2011). The Oregon Supreme Court granted Gable’s request for review, and in a written opinion affirmed the second PCR trial court’s decision. *Gable v. State*, 353 Or. 750, 305 P.3d 85, *cert. denied*, 571 U.S. 1030 (2013).

Gable now seeks habeas corpus relief from this court. In his Amended Petition for Writ of Habeas Corpus, Gable alleges twenty grounds for relief. In his Brief in Support of the Amended Petition, Gable does not address all of the grounds for relief, but instead addresses two claims of trial-court error, several claims of ineffective assistance of counsel, and one claim of ineffective assistance of appellate counsel.

With the exception of the claim of ineffective assistance of trial counsel for failure to object at sentencing on *ex post facto* grounds, Gable’s claims are procedurally defaulted. Gable contends the “actual innocence” standard established in *Schlup v. Delo*, 513 U.S. 298 (1995), excuses his procedural default. Gable also argues the default of certain ineffective assistance of trial counsel claims should be excused under *Martinez v. Ryan*, 566 U.S. 1, 132 S. Ct. 1309 (2012).

FACTUAL BACKGROUND

I. The State Court Proceedings

A. The State’s Case at Trial

At trial, the state contended that at approximately 7:00 p.m. on January 17, 1989, in the parking circle in front of the Dome Building, Michael Francke interrupted Gable as Gable burgled Francke’s car to get “snitch papers.” Under this theory, Gable lunged out at Francke from inside the car, stabbed Francke three times and inflicted the fatal blow, then ran west across 23rd Street into

the Old Salem General Hospital complex. Gable then drove north on Medical Center Drive and turned right on D Street. Meanwhile, Francke, mortally wounded, made his way back to the North Porch of the Dome Building, where he died from blood and oxygen loss after unsuccessfully attempting to open the locked porch door by punching out a window.

1. The Murder and the Crime Scene

On January 17, 1989, Michael Francke attended a meeting at the Dome Building, which then housed the administrative offices of the Oregon Department of Corrections (“ODOC”).³ Tr. 7075. After the meeting ended, Francke met with several of his co-workers in his office until approximately 6:30 p.m. Tr. 8878. Francke was last seen alive by one of his co-workers just before that co-worker left for home at approximately 6:50 p.m. Tr. 7080. Francke had stated he intended to call his wife before heading home. Tr. 8878. When the co-worker left, he walked by Francke’s car and did not notice anything unusual. Tr. 7080, 8882-84.

At approximately 7:07 p.m., five people going to a group counseling meeting passed by the front of the Dome Building and noticed a white car parked in front with its door standing open. Tr. 6922-23, 6927. At approximately 7:15 or 7:20 p.m., two more of Francke’s co-workers left for home, and noticed as they left that the dome light was on in Francke’s car. Tr. 6940-41. On further inspection, they realized that the car door was standing open, and they went back in the building to

³Due to the voluminous transcript and materials associated with this case, points not in dispute are presented in a summary fashion. “Tr.” refers to the trial transcript, which is sequentially numbered in the upper right-hand corner, so no volume numbers or dates are included in the citations. *See* ECF, Docket Nos. 46 through 60. “PCR Trial Tr.” refers to the transcript of the state post-conviction relief proceedings.

look for Francke. Tr. 6942-46. They were not able to locate Francke, and he did not return their calls to his pager number. Tr. 6945-46. The two co-workers then called security. Tr. 6946.

At approximately 12:42 a.m. the next morning, a security guard found Francke's body on the north portico of the Dome Building. Tr. 5956. The body could not be seen until the security guard actually climbed the steps to the north-portico entrance. Tr. 5956. The blood spatter and other physical evidence showed that Francke had climbed the steps of the north portico, unsuccessfully attempted to open the locked door by breaking a pane of glass in the door, and then died on the porch. Tr. 6516-45. At the time he died, Francke wore dark clothes, including a black overcoat. Tr. 6401-02.

The subsequent investigation and autopsy revealed that Francke died from a stab wound to his heart. The evidence showed the assailant had thrust a knife at Francke three times: one knife thrust missed Francke, but slashed his overcoat; a second knife thrust passed through Francke's left bicep as he held his arm tightly to his chest, and then slightly penetrated Francke's chest after passing through business cards in his front shirt pocket; the third knife thrust, which proved the fatal blow, entered the left side of Francke's chest and passed through his heart. Tr. 6411-6415. The fatal wound passed through Francke's chest from left to right at a downward angle (*i.e.*, "from above to below"). Tr. 6417.

Francke also had irregular jagged tears to the skin on his right hand, consistent with punching through the glass pane on the door of the Dome Building. Tr. 6411, 6416. Present around the area of Francke's left eye were a series of three abrasions or scrapes and a contusion on the orbital rim. Tr. 6406. Also present were two small abrasions or scrapes on his left forehead. Tr. 6406-07.

The crime scene itself provided no clues to the identity of the murderer. Thus, the state's evidence at trial centered on eyewitness testimony, circumstantial evidence, Gable's statements to police, and Gable's statements to several acquaintances, all of whom were part of a loose network of people who used or sold methamphetamine in the Salem area.

2. The State's Eyewitness Testimony

a. Wayne Hunsaker

Wayne Hunsaker, a state custodian working at OSH on the day of Francke's murder, testified that he left work at approximately 7:00 p.m. that evening. Tr. 6869. As he walked from the north end of the Dome Building toward his car in the North Parking Lot, he "heard some sound of somebody being hurt." Tr. 6881. He described it as a "surprised, hurt sound like somebody had been hurt," and "Just – kind of like somebody had their breath knocked out. Kind of surprised. Kind of ugh, kind of a grunt sound."⁴ Tr. 6881. After hearing the sound, Hunsaker turned around and saw two men who were about forty feet away from him. The men were facing each other, a couple of feet apart at most. Tr. 6881-82, 9176. Hunsaker watched the two men separate, the one facing west turned and moved east toward the Dome Building, and the one facing east turned and ran the opposite direction. Tr. 6882.

Hunsaker described the individual who moved toward the Dome Building as "[a]bout six feet tall, trench coat on, and that's about it." Tr. 6883. He recalled that individual was "walking like he was in a hurry. Like he was late for an appointment." Tr. 6883. Hunsaker did not see him stumble or stagger or fall, though he could see only part of the person at one point when the person crossed

⁴In the state's rebuttal examination, Hunsaker described the noise as a "yell." Tr. 9168, 9177.

in front of some bushes. Hunsaker also lost sight of the person at times because he was watching both individuals, “I would be watching one, and go back and look at the other, and back and forth. When I turned to watch the one individual, the other one was out of my sight.” Tr. 6885.

Hunsaker testified the other individual was about six feet tall, about 175 pounds, with short hair, either black or dark brown, between 20 and 40 years old. Tr. 6886. He did not notice if the person had facial hair, but recalled he wore a beige trench coat, about knee length. Tr. 6886. Hunsaker said that when the two men separated, this individual “took off running at full speed” until he got to the street. Tr. 6887. The individual “hesitated for just a moment or so, and then he kind of trotted across the street and went behind a dumpster which they were doing construction over here.”⁵ Tr. 6887.

Hunsaker testified that when he saw the two men right before they separated, he did not recall whether they were standing near a car. Tr. 6898. He also testified that he did not see any other person, a man or a woman or anything, in the Dome Building parking circle area, or any cars coming or going. Tr. 6898, 9173-75.

b. Cappie Harden

Cappie Harden testified that he also witnessed the confrontation. At that time, Harden testified that he made his living by buying and selling cars, and by selling methamphetamine. Tr. 8056. Harden knew Gable, having met him at Johnny Bender’s house on Hyacinth Street (also referred to in testimony as “the Hyacinth house”). Tr. 8058-60. Harden stated that he had seen

⁵ During his testimony, Hunsaker used two diagrams of the area to indicate that this individual turned and ran west out of the parking lot, via a driveway leading to 23rd street, and behind a generator at the old Salem Hospital.

Gable at the Hyacinth house a couple of times, and that Gable had given him a ride from that house in the past. Tr. 8058.

Harden stated that, on the day of Francke's murder, Jodie Swearingen had called and asked him to pick her up at her parents' house in Dundee, Oregon. He stated that he did so, and eventually dropped-off Swearingen at the Hyacinth house, where he saw Gable's car parked across the street. Tr. 8059-61.

Harden testified that later that same day, Swearingen called him twice, asking him to pick her up at the OSH grounds, which surround the Dome Building. Tr. 8064. Harden left to do so at approximately 6:30 or 7:00 p.m. Tr. 8064. Harden drove into the Dome Building parking circle area from 23rd Street NE, and parked.⁶ Tr. 8065. He had been there only a couple minutes before Swearingen came up from behind the car; she "kind of startled" him, and got in. Tr. 8065. After Swearingen got in the car, Harden "kind of bitched her out for bugging him to come and pick her up at that time of night when [he] was busy doing things." Tr. 8066.

After Swearingen got in the car, Harden noticed an interior light come on in a car parked across from him in parking circle front of the Dome Building. Tr. 8066. Harden testified that he saw the light in that car come on so he didn't leave right away, and "I seen [Gable] get into the car." Tr. 8068. He decided to "stick around and see what [Gable] was up to." Tr. 8069. Harden said he knew it was Gable because he recognized his face. Tr. 8069. He did not see anyone else with Gable. Tr. 8069. Harden testified that once Gable was in the car, he could not see him because Gable closed the car door and the dome light went off. Tr. 6089.

⁶ As with Hunsaker, Harden demonstrated his route of travel to the jury on a diagram. Tr. 8065.

Harden testified that he then saw another gentleman, who looked “like a businessman,” approach the car. Tr. 8069. Harden testified: “He walked up to the car then and that’s when I heard him yell, you know, ‘Get out.’ ‘Hey, what are you doing in my car.’ And he started running towards the car.” Tr. 8070. Harden testified, “That’s when I seen [Gable] come out of the car and stab the man one time in the chest. And that’s all I seen.” Tr. 8070. Harden explained that he didn’t see anything else because he was busy hot-wiring his car to start it and get out of there. Tr. 8070. He did not see Gable or the other individual after that point.

Harden then took Swearingen to his house, and told her “to shut up and forget what she ever seen.” Tr. 8071. When asked why he did not immediately report the incident to the police, Harden said “I don’t call the police,” because “I’m not a rat.” Tr. 8071.

c. Jodie Swearingen

Jodie Swearingen testified at trial as Gable’s witness. On direct examination, Swearingen testified that she was not at the OSH grounds on January 17, 1989, that she did not call Harden to come give her a ride from the Dome Building, that she had not seen Gable break into anyone’s car, and that she had not seen Gable stab Francke. Tr. 9329. On cross-examination, however, Swearingen made a series of admissions that conflicted with this testimony.

On cross-examination, Swearingen confirmed Harden’s testimony that she had called Harden on January 17, 1989, to pick her up from her parents’ home in Dundee, and that she eventually ended up at the Hyacinth house later that night. Tr. 9340-41. Swearingen agreed that she had previously testified before the grand jury, under oath, that “Shorty [Harden] brought [her] over to the Benders [the Hyacinth house] that night and dropped [her] off and [she] hooked up with Frank Gable at the

Benders and ultimately wound up at the Dome Building that night[.]” Tr. 9367. Swearingen agreed that she told the grand jury that “she drove in Frank Gable’s car over to the Dome Building,” and that “he was there to get snitch papers[.]” Tr. 9367. Swearingen agreed that she testified to the grand jury that her job was “to keep a lookout” from where Gable left her “basically standing in front of a tree that was immediately in front of the north portico porch area.” Tr. 9368-69.

Swearingen agreed she told the grand jury that while standing there, she heard the door of the porch open up, and “wound up seeing a big tall man walk down the steps and across the grass and approach [a] white car that was in the parking circle that night.” Tr. 9369. She admitted telling the grand jury that she “saw Frank Gable get into a struggle with this big tall man near that white car that night[.]” Tr. 9369. Swearingen agreed when asked, “[i]sn’t it true that you indicated that Shorty [Harden] at some point in time shows up and that you run over, get in his car, and then the two of you take off.” Tr. 9369. Finally, Swearingen agreed she told the grand jury that “the last time [she] saw Frank Gable basically that night [he] was running away from the Dome Building while [she] and Shorty [Harden] were driving away[.]” Tr. 9369. Throughout her cross-examination, Swearingen repeatedly testified that although she made these statements to the grand jury, they were all lies.

d. Earl Childers

Earl Childers testified that he knew Gable because Gable would help him procure methamphetamine. Tr. 7746. Childers stated that as a condition of his parole, he attended an Alcoholics Anonymous meeting that ended at 6:30 p.m. Tr. 7751. He stated that he would generally walk home from the meeting, typically passing the OSH grounds on his route home at approximately 7:00 p.m. Tr. 7749-51.

Childers testified that on January 17, 1989, as he was walking home, he saw Gable driving away from the state hospital grounds between 6:30 and 7:00 p.m. Tr. 7754-55. He stated he remembered the date because the day after that his wife, who worked on the OSH grounds, was upset because she had to walk to her car at night near the location where Francke had been killed. Tr. 7749, 7756. Childers said he recognized Gable's car, identifying it as "a gold Supra with black louvers on the back window." Tr. 7798. He saw that Gable was alone in the car, and saw that Gable was wearing sunglasses, noting that it was not unusual for Gable to wear sunglasses at night, as he "wore them all of the time." Tr. 7755, 7798-99. Childers testified he tried to get Gable's attention because he had some drugs he wanted to trade, but that when he "waved and yelled and whistled at him," Gable "just continued on going." Tr. 7756.

Childers stated that when he saw Gable a day or two later, he asked Gable why he had not stopped and given Childers a ride. Gable did not respond to the question and, according to Childers, Gable "just said forget I ever saw him there. Just forget it. So I forgot it." Tr. 7757.

3. Circumstantial Evidence Linking Gable to the Murder

a. Mark Gesner

Mark Gesner was an associate of Gable; Gesner had introduced Gable to Childers, and the two shared the same network of friends. Tr. 7974-77. Gesner sold weapons and methamphetamine to Gable, and the two had disposed of equipment used to manufacture methamphetamine in the past. Tr. 7976-77, 7982-83.

On January 18, 1989, Gesner learned from a news flash on television that Francke had been killed outside the Dome Building. Tr. 7984. Gesner recalled that on the previous night Gable had

arrived at his house as he worked in his garage. Gesner testified: “[Gable] drove up to the house, the garage door was open . . . and [Gable] got out of the vehicle, came up and asked if I could get rid of something for him. And he said where no one else could find it. And I said, yeah, sure. No biggie, you know.” Tr. 7986. Gesner explained that Gable then retrieved a bag from his car: “He went back out to the car and brought in a bag, a plastic bag. And I said just set it in the corner and I’ll take care of it in the morning. And I said what is it? And he said don’t worry about it, I’ll tell you later.” Tr. 7987. Gesner recalled that Gable appeared to be “[a] little nervous” and “sweaty,” and that he took off “very fast which was unusual: he left right away. Usually, he sticks around for awhile, but he was in a hurry, apparently, and left right away.” Tr. 7988.

When Gable dropped off the bag, Gesner assumed it contained “meth stuff again, stuff we’re destroying from the laboratory.” Tr. 7988. However, after learning that Francke’s body had been discovered near the Dome Building, a location in close proximity to where Gesner knew Gable frequently picked up his wife from work, Gable’s “nervous attitude made [Gesner] think, well, what is it in the bag.” Tr. 7990. Gesner was concerned enough that he put on gloves to avoid leaving fingerprints on the bag and went to check it out. Tr. 7990. He testified he could tell from lifting the bag that it was not glassware; rather, it felt like “cloth through [the bag], you know, something cloth.” Tr. 7990. Gesner ultimately decided to throw the bag in a river at a nearby park. Tr. 7991.

Gesner testified that when he got to the park, he opened the bag and put some rocks in it to weigh the bag down. Tr. 7991. He did not inspect the contents of the bag, and could not recall what he saw when he opened the bag other than “some type of a shirt maybe[.]” When he tried to squeeze the air out of the bag, however, he said he said it felt like the cloth was wrapped around some

cylindrical object that would not bend, . . . basically, like something rolled around something hard[.]” Tr. 7991. Gesner testified that he threw the bag into the river, and left after he saw the bag go under the water. Tr. 7993. He said Gable asked him the following day whether he had gotten rid of the bag, and Gesner told him that he had. Tr. 7995. Gesner testified that he did not ask Gable anything more at that time. Tr. 7995.

b. Janyne Vierra Gable

The state also presented testimony from Gable’s wife, Janyne Vierra Gable (referred to hereafter as “Janyne” to avoid confusion).⁷ Janyne testified she worked as a nurse at OSH, and that Gable would drive her to and from work each day. Tr. 7684, 7702. She testified that on January 17, 1989, she was not feeling well, and left work at noon. Tr. 7727-28. Gable gave her a ride home. Tr. 7727. She stated that she slept that afternoon, and awoke just before dark and made dinner. Tr. 7728-29. Janyne testified that Gable was not home that night, and that she did not see him until the following morning about 6:25 a.m. Tr. 7729. Gable had the car, and Janyne remembered being mad because she thought she would be late for work. Tr. 7729-30. She had not seen Gable since “probably around one o’clock in the afternoon” the day before. Tr. 7730.

Gable gave Janyne a ride to work the morning of January 18, 1989. Tr. 7730. When they saw several police officers around the Dome Building, Janyne remembered Gable’s reaction: “Yeah.

⁷ Gable filed a pretrial motion to exclude his statements to Janyne, asserting marital privilege under OR. REV. STAT. § 40.255. Resp. Exh. 220. Shortly before Janyne testified, Gable’s trial counsel asked to be “heard on the issues of marital privilege outside the presence of the jury.” Tr. 7640. At Gable’s trial, Janyne did not testify regarding any admissions Gable made to her concerning the Francke homicide.

He was nervous. I assumed because of the density, high concentration of police in the area.” Tr. 7731.

Janyne testified that approximately a month before Francke’s murder, she recalled Gable giving her a list of names and asking her to access the computer system at OSH to determine “whether any of the people on this list of names were informants or classified in any particular way.” Tr. 7723. Janyne testified that she ultimately declined to do so because of the security measures needed to gain access to the information. Tr. 7724.

Janyne testified that Gable would frequently carry knives, “[a]nything from kitchen knives down to old timer pocket knives.” Tr. 7709. She stated he would carry them either “[u]p his coat sleeve or down the back of his pants.” Tr. 7712. Janyne said she would often find her kitchen knives missing, and “tried to talk [Gable] into taking my cheap kitchen knives instead of my good kitchen knives.” Tr. 7711. She gave Gable a six-inch knife manufactured by Chicago Cutlery in December 1988, but testified that she had not seen that knife since she gave it to him. Tr. 7717-18.

4. Gable’s Statements to Other Associates and Acquaintances

a. Linda Perkins

Linda Perkins was the mother of one of Gable’s friends, Theresa Ross. Tr. 7946. Ross was the live-in girlfriend of Randy Studer, who was Janyne’s brother and Gable’s brother-in-law. Tr. 7946-47.

Perkins testified that she drove Ross from Ross’s apartment to work each morning. Tr. 7949. She testified that on January 18, 1989, she arrived at Ross’s apartment, and that about fifteen minutes after she got there, Gable arrived. Tr. 7950-51. Perkins said Gable appeared “extremely nervous.”

Tr. 7951. Although he was typically “nice and neat” Perkins testified that he looked “out of the ordinary” that morning, dirty, unshaven, and with his hair uncombed. Tr. 7951. Perkins explained: “[h]e was shaky, just jerking, and nervous acting. And kept looking out the window like every sound he heard or even in between sounds that he heard, he kept looking out the window as if – I got the impression he was afraid someone was chasing him or following him.” Tr. 7951.

Perkins said she asked Gable what was wrong, and Gable responded, “Nothing.” Tr. 7952. When Ross persisted, Gable responded, “I fucked up . . . I fucked up big time this time.” Tr. 7952. Perkins testified that when she asked what Gable meant, “he said, ‘Well, I’ll put it to you like this, you will be reading about it in the papers.’” Tr. 7952.

Later that morning, as she drove Ross to work, Perkins heard on the radio that Francke’s body had been discovered. Tr. 7953. Perkins said that when she asked Ross whether Gable had been talking about Francke, Ross discounted that possibility, telling Perkins that Gable was “full of bullshit.” Tr. 7967-68.

Perkins testified that approximately a week-to-ten days after that she spoke with Gable on the telephone, and that Gable “told me that if I opened my mouth I was a dead mother fucker.” Tr. 7953. Perkins also recalled a prior “rather heated discussion” with Gable because she was aware he had been providing Ross and Studer with illegal drugs. Tr. 7967.

b. John Kevin Walker

John Kevin Walker was a methamphetamine dealer who frequently sold methamphetamine to Gable. Walker testified that, on the night Francke was murdered, he recalled listening to his police scanner at a friend’s house and hearing about “some stuff go[ing] down over by the State

Hospital grounds[.] Tr. 8167-69. He recalled “[a]nd that was the only night than I can recall ever hearing that much radio traffic at once.” Tr. 8169.

Walker testified that on January 18, 1989, Gable called Walker, sounding agitated. Tr. 8171. Walker said he went to Gable’s apartment later that night to sell Gable methamphetamine. Tr. 8172. When Walker arrived, they went into Gable’s bedroom to conduct the drug deal. Walker testified that, once in the bedroom, the following exchange occurred:

[Gable] asked me if I had heard the news, and I said what news? And he said, “About that guy over there at the State Hospital grounds.” And I said, “Yeah, he got shot or something.” And [Gable] said, “Well, that’s not exactly what happened, but it’s close enough. I stuck him.”

Tr. 8173. After that exchange, Walker said that Gable threatened him: “And then he was like, you know, tweaked or something and he just goes, you know, kind of in a sad way, I’m sorry, you, if you tell on me, I’m going to have to kill you and kill your family.” Tr. 8175-76.

Walker testified that he initially took Gable’s threat with a “grain of salt” because it “wasn’t characteristic of [Gable] to do something like that to me.” Tr. 8176. However, Walker testified that he noticed a change in Gable’s behavior, that he became “[r]eal edgy. Like I say, on edge. Like a tweaker’s edge.” Tr. 8177. Walker said that he became more concerned, explaining, “As time goes on more and more things get found out. And the more I found out, the – the less I wanted to be around him.” Tr. 8176.

Walker admitted that when he was first questioned by police, he did not tell police about Gable’s admissions. Tr. 8179. He cited his fear of some of the people with whom Gable associated, and “the fact of the rat jacket that gets attached any time you talk to the police about anything.” Tr. 8179.

c. Daniel Patrick Walsh

Daniel Patrick Walsh lived in the same apartment complex as Studer and Ross, and made his living selling methamphetamine. Tr. 7931-32. Walsh testified that in February or March of 1989, Walsh was “sticking a knife into a tree.” Tr. 7933. He said Gable walked up and asked where Walsh got the knife, and Walsh told Gable he bought it from Jerry Paul Baker. Tr. 7934. Walsh testified that Gable said he “had given that knife to Jerry Paul Baker, and that that was the knife that he used to kill Michael Francke.” Tr. 7934. Walsh said he did not take Gable seriously at the time: “I just kind of laughed because he was pretty strung [sic] on drugs then and stuff, and so was I, and I didn’t pay any attention about it really all that much.” Tr. 7934.

Walsh testified that sometime in the summer of 1989 he allowed Gable and his wife, Janyne, to move into Walsh’s apartment. Walsh described an encounter with Gable during that time:

[I]n the process of while he was staying at my house him and Doug Stritchfield were arguing and fighting back and forth. I guess Doug had shot at Frank, called Frank a snitch and a rat, and Frank had made a comment about killing Doug. I just kind of snickered about it at the moment and stuff and he went into, “Well, you remember Michael Francke,” were his exact words, and I just kind of tried not even paying attention to him, you know I just pretty well much was on drugs and stuff, went into about how he went about killing him and stuff.

* * *

He said that that is what would happen to Doug Stritchfield. He had said that he had been jock-boxing and the car had the car door open, and that he was laying across the seat and that Mr. Francke come up along to – up on him, and he had lunged out into Mr. Francke. Didn’t say whether he was out of the car or in the car, lunged into his body and stuff stabbing him repeatedly and that he had fled across the parking lot.

Tr. 7936-37. Walsh testified that after Gable described the stabbing, he threatened Walsh: “[H]e grabbed my chin and said if you ever say a word of this to anybody, I’ll kill you and your family.” Tr. 7937.

Walsh also admitted that he did not initially tell police about Gable’s statements. Tr. 7938. He said that he feared for his family and “didn’t want to have a snitch jacket on me.” Tr. 7938.

d. Earl Childers

As noted above, Childers testified that he saw Gable driving away from the State Hospital grounds on January 17, 1989. Childers also testified that, a couple of months later, he and Gable were talking about a woman, Shelli Thomas, with whom Gable had a “close association.” Tr. 7759. Thomas’s “boyfriend was coming back from California and he had a habit of beating her up.” Tr. 7759. Childers testified that Gable then stated “that if he had any problems with [the boyfriend] he would just stick him.” Tr. 7759. According to Childers, “And I asked him why would you do that and [Gable] said, well, it won’t be the first time. And we let it go at that.” Tr. 7759.

Childers testified that he was arrested in May 1989, and that after serving some time in prison he transitioned to a minimum-security release center. Tr. 7760. Childers testified that he walked away from the release center in July 1989 and went to stay at Mark Gesner’s house until he was arrested again two weeks later. Tr. 7761-62. Childers said that sometime during that two weeks Gable visited Gesner’s house. Tr. 7763. Gesner was not home at the time, and Childers and Gable “started hashing over old times” and doing methamphetamine together. Tr. 7764. Gable told Childers that police “questioned him on the Francke investigation and then subsequently released him because they had nothing on him.” Tr. 7764. Childers then testified:

We just kind of bantered it back and forth while we were waiting for [Gesner]. And at one point when I came out of the bathroom after doing the crank I asked him if he had done it, and he just kind of gave me a smile he gets on his face and didn't say yes or no, kind of insinuated more yes than more not – no.

Tr. 7765.

Childers testified that once Gesner arrived home, Gable, Childers, Gesner, and Gesner's girlfriend walked over to look at a house that they believed "was ripe for a burglary." Tr. 7765. They ultimately decided not to burglarize the home, and walked back to Gesner's house. Tr. 7765. Once back there, Childers asked Gable if he could borrow some clothes, explaining that he did not have any because he was "on escape status" and Gesner's clothes did not fit him. Tr. 7766. Childers said Gable agreed to loan Childers some clothes, and that as they walked to Gable's apartment to get the clothes, they began to discuss the Francke homicide:

We just kind of talked about things and the subject came up again about the – the Francke killing, and we bantered it back and forth and I asked him again if he did it and he told me he had done it. He said that he killed him. And I asked him, well, why? And he said that he was burglarizing the car, going through some cars and he was in Francke's and he got caught and he ended up sticking the guy. And I told him, I said, you're shitting me, you stuck him over a car burglary? He said he [Francke] was going to take me in and I [Gable] didn't want to go back to prison.

Tr. 7767. Childers testified that Gable said he "stuck him three or four times" in the chest and that Francke "was a cock sucker and now he would always be a cock sucker." Tr. 7768.

e. Mark Gesner

As noted above, Gesner testified that on the night of the murder Gable asked Gesner to dispose of a bag. Gesner also testified that on the walk back from the house he, Childers, and Gable were considering burglarizing, Gesner asked Gable about the bag:

We were basically talking about this house going there, but in the course of the conversation I think I brought up, well, what was in the bag? You said you would tell me later. And he said it was the stuff that I was wearing the night of the murder. And I said what murder? And he said the Michael Francke murder. And I dropped it right there because then [Gesner's girlfriend] and [Childers] were starting to get close enough they could hear us talking again, so I stopped talking about it.

Tr. 7999.

Gesner testified that he and Gable talked about Francke's murder a second time, when Gable visited Gesner's house again. Gable "was bragging about, you know, saying I killed Michael Francke, and I said don't even talk about that kind of stuff." Tr. 8000. Gesner testified that Gable made that statement in front of Gesner's girlfriend, and Gesner told Gable, "Don't tell anybody that even if you didn't do it or did do it, don't tell anybody that. Don't talk about something like that. That's how you get busted." Tr. 8000.

5. Gable's Statements to Law Enforcement Investigators

Police first spoke with Gable in May 1989, after receiving a tip that Gable knew something about the Francke homicide. Tr. 7165-67. When asked whether he remembered anything about the Francke homicide, Gable replied that he first learned about the murder on January 18, 1989, when he drove his wife to work at OSH. Tr. 7170. He said that he did not know who had killed Francke. Tr. 7171. Gable reported that, on the day of the murder, "he was sleeping the whole day." Tr. 7171.

Approximately one month later, in June 1989, Gable spoke with police again after he had agreed to work as an informant for the Keizer police. Tr. 7229-31. Gable had been arraigned on unrelated charges in Coos County, and a Keizer police officer drove him from Coos County back to Keizer. Tr. 7232. As they drove back, they discussed, among other things, the Francke homicide. Tr. 7234-35. The Keizer police officer commented that Gable looked like the composite drawing

of the suspect that had been printed in the newspaper, and Gable responded that the police had already questioned him a “couple days” after the murder because “he was on the grounds the day it happened.” Tr. 7235. Gable told the officer that the police had ruled him out as a suspect. Tr. 7235.

Following up on the previous tip, police later contacted Gable for an additional interview about the Francke homicide. Gable agreed to meet with police on September 13, 1989, in Coos County. Tr. 7255-56. Police picked him up from his step-father’s residence in Coos County and drove him to the police station. Tr. 7256, 7258-59. There, Gable spoke with Detective Fox of the Oregon State Police (“OSP”). When Fox first told Gable that he wanted to discuss the Francke investigation, Fox said Gable’s “initial reaction were words to the fact of[sic] I wondered when you sons of bitches were going to try to hang this on me.” Tr. 7269. Fox explained to Gable that it was his choice whether to speak with him, and that he would not be punished if he declined to do so. Tr. 7269. Fox asked Gable if he had ever told anyone that he was involved in the homicide, and Gable stated that he had not. Tr. 7270. Fox testified that Gable did tell Fox, however, that “he was running with a couple by the name of John and Kelly,” and had “pointed out the Dome Building and said that’s where Michael Francke was killed.” Tr. 7270-71. Gable stated that he did not know where he was the night of the murder. Tr. 7271. Gable requested another interview. Tr. 7271.

On September 15, 1989, OSP Detectives Bain and Berning drove to Gable’s step-father’s house to speak with Gable. When the detectives drove up, Gable said “Well, I knew you guys were coming.” Tr. 7281. He asked if there were more officers and jokingly said that he thought the officers “were going to take me down at gunpoint.” Tr. 7281. The officers explained that they were

not going to take him down and just wanted to speak with him; Gable agreed and they drove to the Coos Bay Police Department to talk with him. Tr. 7282, 7284.

Gable was advised of his *Miranda* rights and spoke with OSP Detective Fred Ackom. Gable told Ackom that he did not stab Francke and did not have any information about the Francke homicide. Tr. 7293. Ackom asked Gable what he was thinking when Ackom asked him certain questions. When asked what he was thinking when asked whether he stabbed Francke, Ackom said Gable replied, “‘I was thinking I was joking around with my wife and I told her I killed Michael Francke.’” Tr. 7293. When asked what he was thinking when asked whether he was involved, Ackom testified that Gable replied, “‘I was thinking that people in the joint would think I was a big guy. I wasn’t even around at the time. I was home with my wife and friends at the time. I swear to God on a stack of bibles that I didn’t do it.’” Tr. 7293.

Gable stated that he needed to use the restroom. Tr. 7294. When he left for the restroom, Gable told Detective Bain that “‘he liked Detective Ackom better than he liked Detective Fox’” and Bain thought that Gable “‘appeared to be in a good mood.’” Tr. 7284. However, when Gable returned from the bathroom, he leaned against a wall “‘and began to weep openly, sobbing, making sounds.’” Tr. 7294. Ackom put his hand on Gable’s back and told Gable: “‘Frank, it’s all right. Get it out. Whatever it is.’ He just kept saying over and over, ‘I just know they’re going to roast me or fry me for this.’” Tr. 7294.

Later that evening, at approximately 9:00 p.m., Bain spoke further with Gable. At that point, Gable appeared upset, “‘like he had been crying.’” Tr. 7303. Bain asked Gable whether he was still willing to talk, and Gable stated that he was. Tr. 7303. Bain again advised Gable of his *Miranda*

rights. Tr. 7304-05. Bain initially tried to calm down Gable, and spoke with him about his background. Tr. 7307-08. Bain asked Gable whether he remembered where he had been on the night of the murder. Gable stated that he had picked up his wife from work at 3:30 p.m. on January 17 and then “stayed with his wife that night all evening.” Tr. 7309. Gable told Bain that “in fact, they had a party at the apartment, and there were approximately between twenty and thirty people at this party.” Tr. 7309. Bain told Gable that was good and that he was “going to go back and check with your wife, make sure that she can verify your story[.]” Tr. 7309. He also asked Gable for the names of any of the persons at the party. Tr. 7309. Gable was unable to give a single first name, telling Bain “[w]e don’t use names like you do.” Tr. 7309.

Gable’s wife Janyne was being interviewed simultaneously in another room at the police station. Tr. 7312. At around 10:00 p.m., Bain left to speak with the detective interviewing Janyne, and noted there were “conflicts” between what she was telling police and what Gable was saying to them. Tr. 7311-12. After speaking with the detective interviewing Janyne, Bain went back into the interview with Gable and asked: “Well, Frank, did you ever tell anybody that you killed Michael Francke?” Tr. 7313. Gable responded, “I don’t think I ever told anybody I killed Francke.” Tr. 7313. Based on his conversation with the detective interviewing Janyne, Bain placed Gable under arrest for assaulting Janyne. Tr. 7317.

Gable was transported to the Coos County Jail, and during the transport he talked about killing himself. Tr. 7338. After learning this, Ackom decided to re-contact Gable and went to the jail at approximately 12:30 a.m. on September 16, 1989. Ackom again advised Gable of his *Miranda* rights, and he again agreed to speak with police. Tr. 7343-44. When Ackom told Gable

he was there because he heard Gable was contemplating suicide, Gable “gave out a light chuckle and said that he wasn’t really contemplating suicide.” Tr. 7346. Ackom told Gable he was just as interested in finding out that Gable did not commit the murder as he was in finding out that he did. Tr. 7348. Ackom again asked Gable about possible alibis for that night, and Gable stated that he was with his friend, Kris Warilla, or that he was at home with his wife and friends. Tr. 7349-50.

At one point during the conversation, while they were discussing possible locations of the knife that killed Francke, Gable said, “‘Hey man, whenever you ask me a question about this,’ he says, ‘My mind keeps saying you did it, you did it, you did it, and all of the time I know I didn’t.’” Tr. 7351-52. Ackom said he didn’t understand, and asked, “‘You mean that part of you is saying you did it? You killed Michael Francke, and the other part is saying you did it – didn’t.’” Gable replied, “‘Yeah, it’s like the back part of my brain’ – gestures with his right palm to the back of his head – ‘says I did it, and front part of my brain says I didn’t.’” Tr. 7352. When Ackom told Gable that if he did it, he would remember it, Gable stated, “‘It doesn’t matter if I said yes I did it or no I didn’t. They’re going to fry me for this.’” Tr. 7352. Ackom asked Gable whether he thought the State had enough evidence to charge him, and Gable responded, “‘yeah, they probably do. I don’t know, man. It doesn’t matter. I will stick to this story until the end. I know you want me to make a great big hero out of you’ – there was a large smile on his face, ‘but I just can’t. I can’t man. I don’t think they have anything.’” Tr. 7352.

Ackom testified that he and Gable discussed how God would view the murder, and Gable said he believed that God would forgive the murderer. Tr. 7353. Then Gable said, “‘Yeah, but I’m not saying I did it. I’ll go to the end of the trial saying that, Fred. There are only two people who

know who killed Francke, Francke and God.” Tr. 7353. Ackom reminded Gable that Francke was dead, and “Gable – with a puzzled look on his face like he was thinking about what I said, he said, ‘Well, there are only two people who know Francke – yeah, me and God.’” Tr. 7353. Then, Ackom testified, Gable “puts his arms on the table in front of him like this, he leans forward like he realized what he had said, put his face down on his arms like this, he turns and talks out – looks out of the corner of his eye at me. I was on the left side of him, he says, ‘Yeah. Yeah. Me and God.’” Tr. 7353-54. When Ackom told Gable he had made a Freudian slip, Gable disagreed and stated, “‘I’m going to the end of the trial saying I didn’t do this. I’ll be talking to God all the way. I’ll go to heaven saying it and all those mother fuckers will go to hell for lying.’” Tr. 7354.

Another officer entered the room and asked Gable to consent to the search of his mother-in-law’s house where it was believed Gable had stored some of his belongings. Tr. 7356. Gable withheld consent, explaining: “‘My mother-in-law hates me. She will probably say every fucking knife in the place belongs to me so they can pin this on me.’” Tr. 7356. Gable said he did not want to talk to police any further, and that he wanted a lawyer. Tr. 7356. The interview ended.

Later that day, Gable was taken to a local hospital to have blood and hair samples taken pursuant to a search warrant. Tr. 7364. An officer escorting Gable testified that the doctor who was going to take the samples remarked to a nurse “that he wanted to follow the procedure closely or some attorney would get the guy – and the only guy around being [Gable] – off.” Tr. 7365-66. According to the officer, immediately after the doctor said that, Gable said, “‘No lawyer in the world could get me off.’” Tr. 7366. Shortly after that, when the doctor remarked to the nurse that Gable was up for murder, the officer testified that Gable stated “‘I wasn’t fucking arrested for murder.’”

Tr. 7366. Approximately a minute later, Gable started “crying, very much, uncontrollably and turned very pale.” Tr. 7366.

Although Gable had invoked his *Miranda* rights at the conclusion of the September 16, 1989, interview, on November 3, 1989, he asked to speak with Detective Bain or any of the other detectives because “he had information concerning the Francke case.” Tr. 7454, 7457. Bain, Ackom, and Sergeant Salle went to the Coos County Jail and spoke with Gable for approximately five and one-half hours. Tr. 7505.

Detective Bain testified that Gable wanted to discuss a newspaper article which reported that Mike Keerins had stated that Gable admitted to him that Gable had killed Francke. Tr. 7460. Gable stated that “this isn’t what happened, that the opposite was what had happened.” Tr. 7460. Gable “thought that Mike Keerins was a smart guy and that he came forward to the police and made statements about [Gable] prior to [Gable] coming to the police and making statements about his suspicions of Mike.” Tr. 7528.

Gable stated that he had thought more about the night of January 17, 1989, and he first said that he was “positive” that he was with Kris Warilla. Tr. 7464, 7466. He stated that he and Warilla had sold methamphetamine at the “AM/PM store,” and then went to dig through dumpsters for clothing and antiques. Tr. 7465. He stated that they then stayed at Warilla’s home, until he picked up his wife to take her to work the next morning. Tr. 7465. At one point, Bain told Gable that Warilla had “made the statement to police that [Gable] had stabbed the guy. Tr. 7513. After that, Gable said he was less certain that he was with Warilla on the night of the murder and that he could have been with Shelli Thomas, at home, or up in Portland. Tr. 7529.

During the November 3, 1989 interview, Gable confirmed that he had made statements to his friends that related to Francke's murder. He denied that he had told his friends that he had stabbed Francke, but he acknowledged, "I might have made some stupid statements. I might have been involved in some funky statement that may have been perceived wrong." Tr. 7487. He stated that he hoped to work with police to clear those statements up. Tr. 7487. He stated that he could not remember whether he told his wife that he knew what happened to Francke, and said that if he had made such a statement, he had merely offered his opinion about what happened. Tr. 7470.

At certain points during the interview, Bain testified that Gable stated he did not believe that any of his associates had told police that he had admitted to them he committed the murder. He believed Janyne to be the only person who would have made any such statements to police. Tr. 7512.

Detective Salle testified that during the course of the interview Gable stated he owned a tan trench coat. Tr. 7536. Gable stated that "if someone mentioned [Gable] in a trench coat that that's the coat they would have been talking about because he wore it all around." Tr. 7536.

Detective Salle testified that Gable confirmed his relationship with several of the witnesses who would later testify against Gable. When asked to name a good male friend of his at the time of the murder, Gable named Gesner, noting that he was Gable's main connection for methamphetamine. Tr. 7533-34. Gable explained that Walker introduced him to Gesner during the course of a drug deal. Tr. 7470. Gable described Childers as a "pretty good guy" and that "he wouldn't talk to the police if he knew some information about [Gable]." Tr. 7535. Gable said he did not know

Swearingen until July 1989. Tr. 7556-57. When asked if she could have seen him on January 17, 1989, Gable “said, ‘well, she probably could have, but I don’t know where I was.’” Tr. 7556.

At the conclusion of the November 3, 1989, interview, Gable agreed that police could come back and talk with him again, and asked them to check on his wife for him because he had not heard from her. Tr. 7561.

On December 22, 1989, Ackom spoke with Gable again. After advising Gable of his *Miranda* rights, Ackom asked Gable whether various people could have seen him stab Francke in front of the Dome Building. Tr. 7564. Each question was in the form of “Did [individual’s name] see you stab Michael Francke in front of the Dome Building.” Tr. 7565-66. Ackom said during the questions that Gable “maintained a – perfect eye contact, he looked right at me. He had a big toothy grin like he was really anticipating listening to the questions.” Ackom testified that when he asked Gable, “Did Jodie Swearingen see you stab Michael Francke in front of the Dome Building?” Gable “kind of leaned back in his chair, he crossed his arms, he looked down, his pupils looked down to the left.” Tr. 7566. On the other names, Gable “gave no response whatsoever.” Tr. 7566. Ackom started to name people from a second list, and Gable interrupted him and said, “‘That Jodie gal, the bitch is saying she saw me run from the scene, isn’t she?’” Tr. 7566.

Ackom then turned to the subject of Gable’s whereabouts on January 17, 1989. Gable confirmed that he knew a “John and Kelly” who lived on Hyacinth Street. Tr. 7567. Ackom asked whether Gable could have been at that house on January 17, 1989, and “[h]e said he was going there every night, four or five nights in a row over the 17th. He very well could have been there on the night of the 17th. He was taking dope deals to the Hyacinth Street house.” Tr. 7567. Ackom asked

if Swearingen had been there on the 17th and he said she very well could have been there, but he didn't meet her until July 1989. Tr. 7568. Then Gable said he could have met Swearingen earlier than July, as early as March or February. Tr. 7569.

In the course of describing the people who may have been at the Hyacinth Street house, Ackom said Gable "just out of the clear blue and it didn't mean much to me at the time, but he said if anyone would have seen me that night I would have been wearing dark sunglasses. Hey Fred – he said, 'Hey, Fred, I'll tell you one thing, if anyone would have seen me that night, I would have been wearing dark sunglasses. I always wore dark sunglasses, day or not.'" Tr. 7569-70.

Ackom returned the next day, December 23, 1989. Ackom testified that "[Gable] wanted to know what [Janyne] was saying about him. She keeps telling us things, that he killed Michael Francke, that it's just not true. He didn't kill anyone. Stated he wanted to help us." Tr. 7575. Ackom testified that Gable "wanted to know about the eye witnesses he says – that says they saw him kill Michael Francke." Tr. 7575. Gable stated, "I know it's that Jodie gal, isn't it? She is saying she saw me running from the scene, isn't she?" Tr. 7575-76. Gable also stated that he used to work at a warehouse near the Dome Building, that he knew exactly where Michael Francke's office was. At the conclusion of the interview, Gable said, "Well, nobody saw me because I didn't kill the guy." Tr. 7576.

Ackom interviewed Gable again on January 21, 1990. Tr. 7576. Ackom told Gable that police had people who were saying that Gable was at the scene and saw him and what he did. Ackom described Gable as becoming "very nervous and popping his neck and moving all around." Tr. 7578. Gable told Ackom he "didn't want to hear it and he got up and ran out of the room." Tr.

7579. Out in the hallway, Gable just kept saying he didn't want to hear this, and "All we had was a bunch of zeros talking." Tr. 7579.

On April 8, 1990, Gable was arrested at the Coos County Jail for the murder of Francke. Tr. 7594-95. At the time of his arrest, he was advised of his *Miranda* rights and given a copy of the indictment, which included a list of the witnesses who appeared before the grand jury. Tr. 7595-96, 7603. While en route to the Marion County Jail, the police stopped at a patrol office in Florence, and at the Lane County Jail. OSP Detective Glover spoke to Gable, "'Frank, I said, 'do you realize that we have a witness than can place you at the scene? That saw you drive away from the scene on to D street and then head up to Park Street and turn left?'" Tr. 7604. Gable responded, "'Oh, Earle told you that, didn't he.'" Tr. 7604. When asked how he knew it was Earle, Gable said, "'Well, I knew that Earle worked – his wife worked over there at the hospital.'" Tr. 7604. When asked, out of all the names on the witness list that Detective Glover gave him, how he picked Earle's name as the one who saw Gable driving away from the Dome Building, Gable said, "Well, just lucky, I guess." Tr. 7613.

Gable also confirmed the meeting described by Childers and Gesner during which they said Gable admitted to killing Francke. Tr. 7604. Gable told Glover that Childers had just walked away from the Corrections Division Release Center; that Gable met with Childers at Gesner's residence; that he and Childers took a "hit of dope" before Gesner got home; that Gesner eventually arrived at the residence; that he, Childers, Gesner, and Gesner's girlfriend then walked from Gesner's house to a house that they were considering burglarizing; and that they ultimately decided not to burglarize the house. Tr. 7604-06. Gable further confirmed that after they walked back to Gesner's residence,

he and Childers walked to Gable's residence to get some clothing for Childers because he "needed a shirt." Tr. 7606-07. Gable denied he admitted to Childers that he killed Francke: "No. I didn't tell him that." Tr. 7607.

Glover testified that toward the end of the interview another officer, OSP Sergeant McCafferty, told Gable he believed Gable killed Francke. Tr. 7612-13. Gable said, "maybe so, maybe not." Tr. 7613. Detective Glover said, "You're going to take this to the grave with you, aren't you?" and Gable responded, "You bet I am." Tr. 7613. Gable requested an attorney, and the interview concluded. Tr. 7613.

On April 9, 1990, Gable was arraigned at the Marion County Courthouse. Before his hearing, Gable waited in the basement of the courthouse. Tr. 7629. Detective Ackom was with Gable for two or three minutes, but did not ask him any questions. Tr. 7630. Ackom testified that Gable spoke to him:

He was shaking his head from side to side, he said, "You have got the wrong guy, Fred. I don't know why these people are saying these things about me. I wish I could tell you I could say things about them. I wouldn't do that. I'm not a rat. The best I can do for you, Fred, is I might have been driving by that night and Jodie and Shorty saw me."

Tr. 7630. That was all Gable said, and they went upstairs. Tr. 7630.

B. The Defense Case at Trial

Defense counsels' intended central defense theory focused on third-party guilt; specifically, that John Crouse, who in April 1989 had confessed to murdering Francke three months earlier, committed the murder. Tr. 8467-68. The state moved *in limine* to exclude defense evidence that others, including Crouse, committed the murder. Tr. 5864-65, 8466. As discussed in more detail

below, Crouse later denied committing the murder and invoked his Fifth Amendment rights on all subsequent questions. Tr. 9487-89.

The defense pursued other avenues of attack. Through cross-examination of the state's witnesses, the defense attempted to discredit the thoroughness of the crime scene investigation, suggesting that the crime scene was compromised, and that evidence might have been lost when, for example, nearby dumpsters were emptied before being searched. *See, e.g.*, Tr. 5978-80, 6049-54, 6069-70, 6088, 6112, 6142-43, 6464. The defense also presented the testimony of experts who criticized the State's crime scene investigation. Tr. 9595-9653, 9665-68.

The defense also sought to undermine the state's theory of when and where the attack occurred, in part, through testimony that numerous people in the Dome Building vicinity at 7:00 p.m. saw nothing suspicious, and also through the testimony of other people who saw suspicious things later in the evening. Tr. 9059-9101, 9282-99, 9306-12, 9461-74. Rather than cross-examine the state's witnesses who were present in and around the Dome Building on the night of the murder, the defense recalled most of them, and called several others, in its case. Tr. 8662-8747, 8877-8941, 9163-9211.

The defense also re-called some of the law enforcement witnesses who testified for the state to talk about the duration and coercive nature of certain of their numerous interrogations of Gable. Specifically, the defense brought out the carefully planned long interrogation that took place in April 1990 as Gable was transported from Coos Bay to Salem for arraignment on the murder charges. Tr. 8662-8747.

The defense also sought to undermine the credibility of the state's key witnesses, doing so primarily through collateral evidence. Tr. 8477-8661, 8751-8867. The defense also presented Jodie Swearingen's testimony. As previously discussed, Swearingen recanted her grand jury testimony and swore at trial that her grand jury testimony was untrue.

The defense did not file an alibi notice, but presented witnesses in an attempt to establish that Gable was at the home of acquaintance Shelli Thomas around the time of the murder. Tr. 8553-60, 9392-9416. The state refuted this evidence through cross-examination and in its rebuttal case, using telephone records and presenting other evidence to show that although Gable likely had been at Thomas's house in late January 1989, his visit did not occur on January 17, 1989. Tr. 9800-9809.

Finally, the defense called an expert forensic pathologist. The expert testified that the murder weapon likely was a pocket knife having either a serrated or unserrated blade that could have been as short as 3-4 inches long and less than 5-6 inches long, because it did not pierce both lungs. The expert testified that the Chicago Cutlery knife could not have been the murder weapon because of its blade thickness, and because it did not have a hinge that would have accounted for a "half moon" shaped notch on the fatal wound. Tr. 9656-9775.

The defense rested without calling Gable to testify. Tr. 9791. On June 27, 1991, the jury returned a guilty verdict against Gable on six counts of Aggravated Murder and one count of Murder.

C. The Penalty Phase

On July 2, 1990, the penalty phase began for the jury to determine whether or not to impose the death penalty. The court instructed the jury under an amendment to the Oregon death penalty statute that became law after the date of Francke's murder. The two sentencing options available

at the time of the crime were life with the possibility of parole or death, but the amendment provided a previously-unavailable third option: life without the possibility of parole. Resp. Exh. 363, pp. 9-10. Gable's attorneys did not inform him that he had a right to challenge the application of the amended statute to his case on *ex post facto* grounds, and they did not object to its application; in fact, they affirmatively requested that the jury be instructed under the new law.

The jury rejected the death penalty by a vote of two in favor and ten against, but found insufficient mitigating circumstances to warrant a sentence of life with the possibility of parole. As a result, the trial court sentenced Gable to a term of life in prison without the possibility of parole. Tr. 10526.

D. Direct appeal

Gable appealed, alleging the trial court erred in: (1) denying Gable's motion to suppress certain of his statements to law enforcement in violation of the Constitution's Fifth Amendment; (2) excluding evidence of John Crouse's confession under Oregon evidentiary rules; and (3) applying the amendments to the Oregon death penalty statute in violation of the Constitution's *Ex Post Facto* Clause. Resp. Exh. 106. In 1994, the Oregon Court of Appeals affirmed the trial court's judgment in a written opinion. *State v. Gable*, 127 Or. App. 320, 873 P.3d 351 (1994). In the opinion, the court of appeals found Gable never invoked his Fifth Amendment rights, declined to discuss the exclusion of the Crouse evidence, and declined to address the *ex post facto* issue because it was unpreserved. *Id.* Later that same year the Oregon Supreme Court denied Gable's petition for review, in which he raised the same issues. *State v. Gable*, 319 Or. 274, 877 P.2d 1202 (1994) (Unis, J., would have granted review).

E. State Post-Conviction Relief Proceedings

In July 1995 Gable filed a PCR action in Marion County Circuit Court. The PCR court appointed Ken Hadley to represent Gable, and Hadley eventually filed a Third Amended PCR Petition. The petition contained various allegations that both trial and appellate counsel provided ineffective assistance of counsel, in violation of the Sixth and Fourteenth Amendments. As relevant here, the petition included a claim of trial counsels' ineffectiveness in failing to object on *ex post facto* grounds to the trial court's penalty phase jury instructions that included the life without possibility of parole option. Resp. Exh. 155, p. 4.

In May 2000 the PCR trial court held a three-day trial and the parties submitted their respective post-trial closing memoranda. On January 2, 2001, in a 104-page judgment, the PCR trial court denied all relief. Resp. Exh. 345.

Gable raised six issues on appeal, including a claim that the PCR trial court erred by finding that trial counsel was not ineffective and that Gable had waived his *ex post facto* rights by a totality of the circumstances. Resp. Exh. 357, p. I. In 2006, the Oregon Court of Appeals issued a written opinion denying relief on all issues except this one. *Gable v. State*, 203 Or. App. 710, 126 P.3d 379 (2006).

On that issue, the court of appeals concluded that the PCR trial court erred "in finding that Gable had waived any objection, based on *ex post facto* protections, to the submission of the 'true life' sentencing option to the jury." *Id.* at 726. The court of appeals further concluded that trial counsel had "failed to exercise reasonable professional skill and judgment" by "failing to confer with Gable regarding any waiver of the *ex post facto* objection" to the true life sentence option. *Id.* at 726.

The court of appeals explained, however, that this conclusion did not compel granting post-conviction relief. Instead, the court of appeals vacated the PCR judgment and remanded the case to the PCR trial court because that court had “never determined whether Gable was prejudiced by his attorneys’ default,” and the PCR trial court was to make a finding on that issue in the first instance. *Id.* at 727, 735. Later that same year, the Oregon Supreme Court denied Gable’s petition for review on the remaining issues. *Gable v. State*, 341 Or. 216, 140 P.3d 1133 (2006).

On remand, the PCR trial court conducted a hearing limited to deciding whether Gable suffered prejudice because of trial counsels’ failure to advise him of his *ex post facto* rights, and failure to raise an *ex post facto* objection to submission of the true-life sentencing option to the jury. Resp. Exh. 371. In December 2006, the PCR trial court issued a judgment denying PCR relief. Resp. Exh. 371.

Gable appealed the second PCR court’s ruling. In June 2011, the Oregon Court of Appeals affirmed the second PCR court decision without opinion. *Gable v. State*, 243 Or. App. 389, 256 P.3d 1099 (2011). In 2013, the Oregon Supreme Court granted Gable’s request for review and denied relief in a written decision. *Gable v. State*, 353 Or. 750, 305 P.3d 85, *cert. denied*, 571 U.S. 1030 (2013).

II. Other Evidence Not Presented at Trial, Including Evidence of Third-Party Guilt

As noted previously, the defense made an offer of proof at trial seeking to admit evidence of a third-party’s, John Crouse’s, guilt. Tr. 9514-58. The trial court did not permit the defense to introduce this evidence. Tr. 9511.

On February 15, 1989, two detectives first interviewed Crouse after he informed his parole officer that he had information about the Francke homicide. Resp. Exh. 179, p. 13. Crouse told the detectives that on January 17, 2019, he visited his parole officer and left for home a little after 6:00 p.m. Resp. Exh. 179, p. 21. Crouse said that as he was walking home he observed a commotion by the Dome Building, and that he saw four or five guys together. Resp. Exh. 179, p. 27, 31. He said he saw them “drop some guy,” and then four of them ran toward a car and the other one took off running. Resp. Exh. 179, p. 27. He said the man that took off running was a Mexican, that the man threw something in a parking lot as he ran, and that Crouse chased the man for about three and a half miles, but was unable to catch him. Resp. Exh. 179, p. 31. Crouse denied any involvement in Francke’s death, though he knew from newspaper accounts that Francke had been killed by a knife, and knew Francke had been the head of the corrections department in New Mexico before moving to Oregon. Resp. Exh. 179, pp. 38-39.

On April 4, 1989, DOJ Investigator Randy Martinak and OSP Detective Pecyna interviewed Crouse, who had just been arrested on an unrelated assault charge. Tr. 9537.⁸ For the first hour of the interview, Crouse again talked about the five assailants. Tr. 9537. When Martinak told Crouse he did not believe his account, Crouse changed his story; this time, he said a man named “Juan” had approached him to “take care of Francke for \$300,000.” Resp. Exh. 179, p. 51.

Crouse described receiving a \$1,500.00 down payment from Juan, standing across the street from the Dome Building smoking and waiting Francke to emerge, and that when Francke came out of the Dome Building and was getting in his car, Crouse stabbed him once or twice. Tr. 9540-41.

⁸Martinak’s testimony was in the form of an offer of proof outside the presence of the jury at trial.

Crouse gave additional details about the stabbing and the aftermath. Resp. Exh. 179, pp. 51, 64, 67, 70; Tr. 9541-42. In particular, when asked where Francke was stabbed, Crouse said, “In the heart.” Resp. Exh. 179, p. 299. Crouse said he stabbed Francke at least twice and thought he had cut Francke’s arm once. Resp. Exh. 179, p. 299.

Later that day, Crouse changed his story again. Resp. Exh. 179, p. 300-01. Crouse stated that he made contact with Francke, started a verbal confrontation in order to get up enough nerve to stab Francke, that Francke grabbed him and they wrestled around for awhile before Crouse stabbed Francke. Resp. Exh. 179, p. 301. Crouse stated he struck Francke at least once with his fist, and that he stabbed Francke when it appeared he was going to lose the fist-fight. Resp. Exh. 179, p. 301. Crouse said he would be more comfortable with writing out what happened, and the interview ended. Resp. Exh. 179, p. 301.

The next day, April 5, Martinak again interrogated Crouse. Resp. Exh. 179, p. 75. Crouse asked everyone else to leave room, and then described to Martinak how Crouse had stabbed Francke about five times and didn’t know all of the areas, but knew it was “at least one in the heart, on a downward motion, and that he thinks maybe that he stabbed him in the right arm, and it was not just a slice as described in the day previous.” Resp. Exh. 179, p. 75.

After this brief conversation, Crouse was allowed to call his brother Larry Crouse, and agreed to have the conversation tape-recorded. During the course of the conversation, as reported by Martinak, Crouse asked his brother if he remembers a prior telephone conversation when Crouse admitted to killing Francke. Resp. Exh. 179, p. 76. Crouse further admitted that first when the

incident started out “it was just a freak accident,” and “that it had turned out to be more than he had intended it to be.” Resp. Exh. 179, p. 76.

Later that day, Crouse agreed to accompany detectives to the Dome Building to view the scene. Resp. Exh. 179, p. 77. At one point, when Crouse turned and began to walk away, Martinak grabbed Crouse by the shoulder. Resp. Exh. 179, p. 77. Crouse immediately became very hostile and squared off against Martinak in a fighting stance and made threats toward Martinak. Resp. Exh. 179, p. 77. On the way back to the patrol office from the Dome Building, Crouse told the officer who was driving that Crouse “didn’t like to have someone touch him like that,” and then said something like, “he [Crouse] didn’t have a knife, but he would do with what he had.” Resp. Exh. 179, p. 77.

Upon returning from the crime scene, detectives again interrogated Crouse. Resp. Exh. 179, p. 78. Crouse modified his story, this time saying that on the night of January 17 he had walked by a car and saw some stuff in it, and took a piece of wire and got into the car. Resp. Exh. 179, p. 94. Crouse did not know whose car it was. Resp. Exh. 179, p. 94. He was only in the car for a few minutes when “a lone man grabbed him and said come with me.” Resp. Exh. 179, p. 94. Crouse said he came up out of the car and was scared and then furious. Resp. Exh. 179, p. 94. When he tried to jerk away, the man hit Crouse. Resp. Exh. 179, p. 94. Crouse described the man as between 6' and 6'3" tall, and between 170 and 200 pounds, and “cock strong.” Resp. Exh. 179, p. 99. Crouse described swinging at the man and trying to stab him in an effort to get free, but when this did not stop the man, Crouse decided to aim for the chest. Resp. Exh. 179, p. 95.

A detective summarized the results of this interrogation as follows:

While at the patrol office, Crouse indicated he did not wish to talk with Det. Martinak any further, as he did not like the way Det. Martinak had grabbed his shoulder. The writer explained to John Crouse that it appeared to writer that this had set him off and made him very angry, as it possibly had on the same night of January 17, 1989, when Michael Francke had touched him at Francke's vehicle. John Crouse agreed with writer and agreed to resume talking with Det. Martinak and the writer. At this point, also, Crouse agreed to give complete details indicating he wanted to get past the point he is having trouble with, referring to "the black wall".

At approximately 8:50 PM, date [sic], a tape recorded interview was conducted. John Crouse was advised the conversation was being recorded and agreed to the taped interview. John Crouse was also asked if he understood the constitutional rights he was advised earlier, and stated that he did understand and was giving this statement of his own free will. At this point, Crouse indicated that on January 17, 1989, he walked up to the car and took a piece of wire and used it to unlock the locked door. He then advised that he was grabbed by a lone man and at that point turned "furious". At this point, he grabbed his knife, after being struck by this person. At this point, Crouse advises that he cannot remember exactly all the spots that he hit him. He did indicate, however, that he was going at his chest when he hit Crouse's arm, causing him to hit in his heart. Then he pulled back, this person stated, "My God". Crouse then indicated he looked at him for a moment, then took off running down the driveway, indicating westbound, and looked back to see if anyone was chasing him. He further indicated he kept running until he got down to approximately 17th Street.

John Crouse further describes how he believes that he had stabbed Francke in the stomach and possibly cut his arms and hands, because he had been swinging at him and trying to stab him, trying to get him off from fighting him. At one point, John Crouse describes how he was almost knocked out when he was struck by Michael Francke. Crouse further indicated that at one point he decided that maybe if he had struck Francke in the chest, it would slow him down. He describes how he stabbed him in the heart from a downward position. He was using his left hand, keeping his right hand free for power in case he had to strike him. John Crouse goes on to describe how he remembers getting Francke in his hands and upper forearm area. He further describes how he had cut him on his right arm, but could not remember if he hit him up any further on his arms.

* * *

Crouse indicated that he did not know that it was Michael Francke until the next morning. Crouse further indicated in the taped interview that he remembered

Michael Francke possibly wearing glasses, but he was not sure if he hit a pair of glasses when he struck Michael Francke.

Resp. Exh. 179, pp. 78-79. The report writer described Crouse's demeanor as follows:

It should be noted that writer observed John Crouse to give this last statement a lot smoother than previous statements he had given. It appeared that it was spontaneous and smoothly spoken. He had no hesitation in answering questions, as he did in earlier statements, which appear to be untruthful, either in part or in whole.

Resp. Exh. 179, p. 79.

On April 9, Detective Glover interviewed Crouse. Tr. 9547. During that interview, Crouse recanted his prior confessions and denied that he had killed Francke. Tr. 9547.

On April 13, 1989, Crouse asked to speak with Martinak and Pecyna to recant his recantation. Crouse explained that he told Detective Glover he had not killed Michael Francke because Glover was new as far as interviewing Crouse, and "he thought he would have a ray of hope to get away with it." Resp. Exh. 179, p. 142. He further indicated to Martinak and Pecyna that he "could not live with getting away with the Francke murder." Resp. Exh. 179, p. 142. When asked whether the truth was that he did kill Michael Francke, Crouse replied that the he didn't know it was Francke until the next day. Resp. Exh. 179, p. 146. When asked how he hit Francke during the confrontation, Crouse described it as "a round house with my right hand, it would be in the left side of his face." Resp. Exh. 179, p. 148. During the April 13 interview, Crouse also described the wire he used to enter Michael Francke's vehicle. Resp. Exh. 179, p. 142.

On April 19, 1989, an FBI polygrapher examined Crouse. Resp. Exh. 179, p. 10-12. Crouse told the polygrapher that he had just broken into an automobile when the owner, who turned out to be the victim, tried to grab Crouse and hold him for the police. Resp. Exh. 179, p. 11. Crouse said

he fought with Francke, and finally when he could not get away, he pulled out a knife and stabbed Francke. Resp. Exh. 179, p. 11. Crouse said all the other stories he told police were lies, except for the last story when he admitted to stabbing Michael Francke. Resp. Exh. 179, p. 11. The polygrapher described the questions posed to Crouse and his responses, along with the polygrapher's conclusions, as follows:

- A) Did you lie when you told the police that you stabbed MR. FRANCKE? no
- B) Did you make up the story about you using a knife to defend yourself against MR. FRANCKE? no

It is the examiner's opinion that Mr. Crouse was not deceptive to these questions. Because of the very serious nature of the incident, Mr. Crouse was given a second exam utilizing another polygraph technique wherein he was asked the following relevant questions:

- C) Did you lie to the police when you told them that you stabbed MR. FRANCKE? no
- D) Did you make up that story about you attacking MR. FRANCKE? no

The examiner believes that Mr. Crouse was not deceptive to these questions, and he was being truthful when describing his role in his final statement to the police.

Resp. Exh. 179, p. 12.

On June 15, 1989, Crouse again was interviewed. This time, Crouse denied killing Francke, but claimed to have played a role in concealing the murder. Resp. Exh. 179, pp. 158, 161-62. Crouse described a conspiracy among ODOC corrections officials to kill Francke, and claimed he knew the person who actually committed the murder. Resp. Exh. 179, p. 197.

On November 29, 1989, the state provided Crouse with immunity, agreeing not to prosecute him for hindering prosecution based on “[a]ny false statements that Mr. Crouse may have made in the course of previous interviews concerning the Michael Francke homicide.” Resp. Exh. 179, p. 289. On November 30, 1989, Crouse gave a final interview to OSP Detective William Pierce. Crouse stated that he did not kill Francke, and that his prior statements concerning his involvement in Francke’s death were “false statements.” Resp. Exh. 179, p. 268. Crouse said he had “no involvement” in Francke’s death, and that he learned several of the circumstances of Francke’s death only during the course of his interviews with Martinak and Pecyna. Resp. Exh. 179, p. 268-69. Crouse also denied any knowledge of who killed Francke. Resp. Exh. 179, p. 277.

When asked if he would be willing to talk to investigators further, he replied, “I have immunity from this. The only thing I don’t have immunity for is direct involvement in the Michael Francke case.” Resp. Exh. 179, p. 289.

III. New Evidence

A. Recantations

1. Michael Keerins

In late September 1989, the Task Force received information that Keerins and his brother (Kris) had been involved in the murder. Pet. Exh. E, p. 65-94; *see also* Pet. Appx. A, p. 4 (discussing investigation of Michael Keerins’ brother, Kris, as a person of interest to the investigation in January and February 1989); *see generally* Resp. Exhs. 299-300. The Task Force had previously interviewed Keerins in May 1989, just after Gable allegedly confessed to him, but at that time Keerins did not mention Gable’s confession. Resp. Exh. 299, p. 24-25. When

interviewed in September, Keerins this time told the Task Force that Gable made a jailhouse confession to him when they were incarcerated together in May. In exchange for his testimony against Gable, Keerins negotiated a transfer back to Oregon from the out-of-state prison where he was housed. Pet. Exh. E, pp. 91, 315; Pet Exh. A, p. 98; Pet Exh. D, p. 135.

Keerins testified before the grand jury, and was one of the witnesses designated by the state for trial as “material,” but he did not testify at trial. Keerins, was, however, the first witness to directly implicate Gable.

Gable now presents an affidavit from Keerins in which he admits he lied, making up the jailhouse confession to deflect suspicion from his family and for personal gain, and because he had learned Gable was a “snitch for Keizer P.D.” Pet. Exh. A, p. 97-99. In the affidavit, Keerins states, “I told the Oregon State Police and the Grand Jury that eventually indicted [Gable] for Mr. Francke’s murder that [Gable] confessed to me while we were housed together at the Marion County Jail in 1989. This was untrue.” Pet. Exh. A, p. 97.

2. Cappie Harden

As discussed above, Harden testified at trial that he witnessed the murder; he said that he drove into the parking lot at the North Dome to pick up Jodie Swearingen, and saw Gable lunge out of Francke’s car and stab him. Gable submits an affidavit from Harden recanting his testimony. Pet. Exh. A, p. 19. In it, Harden states, “I did not see [Gable] on the night that Michael Francke was murdered. I was at home that night. I was not at the Dome Building and I did not pick Jodie Swearingen up there. I did not see [Gable] stab Michael Francke.” Pet. Exh. A, p. 19.

Harden explains the reason he gave false testimony at trial as follows:

I was contacted by the Oregon State Police on numerous occasions in connection with the Michael Francke murder investigation starting in late 1989. I was incarcerated at the time. I was told that [Gable] had informed against me previously. The police questioned and polygraphed me many times[.] I initially told the truth, which was that I was not an eyewitness to the Francke murder. However, after the police threatened me and my family I eventually adopted the false story to which I testified at Grand Jury and trial.

Pet. Exh. A, p. 19.

3. Jodie Swearingen

As noted above, Swearingen testified to the grand jury that she was an eyewitness, along with Cappy Harden, to Francke's murder. At trial, she recanted that testimony, and denied that she had witnessed the murder. Through cross-examination, however, the state was able to elicit the testimony she gave the grand jury, thus corroborating Harden's testimony.

Gable submits two affidavits from Swearingen. In one, Swearingen states that she gave the following truthful testimony at Gable's trial: "I was not on the Oregon State Hospital grounds on January 17, 1989. I did not see [Gable] stab Michael Francke. I did not meet [Gable] until after the Francke murder. I met [Gable] during the summer of 1989. [Gable] never told me that he killed Michael Francke. If called to testify in a re-trial of this case, I would testify as I did at the original trial." Pet. Exh. A, p. 25.

In both affidavits, Swearingen explains the chain of events that led up to her telling the Task Force and testifying to the grand jury that she was an eyewitness. She felt police had already made up their minds that she was involved and would not believe anything she said that would convince them otherwise, and she felt the officers forced, coerced, and intimidated her to make statements that were either not true, partially true, or told out of context. Pet. Exh. A, p. 22. Police told her that her

and Harden's stories were a lot alike, but that they "needed to be closer. 'Your story has to jive with [Harden's] and the Grand Jury has to believe it.'" Pet. Exh. A, p. 22.

Swearingen describes the interrogation techniques used by police during multiple polygraph examinations. She says she would tell them the truth and they would say she was lying, and that when she told them what they wanted to hear, they said she was telling the truth, when in fact it was a lie. Pet. Exh. A, p. 23. The Oregon State Police interviewed her for several hours at a time, and polygraphed her "one, two, and even three times a day[,] "over all hours of the day." Pet. Exh. A, p. 23. She also states that the Oregon State Police took her to the crime scene, and that "[m]ost of the facts I remember today, are facts that were told to me by the Oregon State Police." Pet. Exh. A., p. 26.

4. John Kevin Walker

Walker testified that Gable confessed to him in private the day after the murder. Roger Harris, an investigator hired by Gable's then-wife, interviewed Walker about his testimony. Pet. Exh. A, p. 36-38. During the course of the interview, Walker stated that during the initial police interrogations and the first polygraph examination, he told police the truth. After the police told him his truthful statements were lies and led Walker to believe he was being investigated as a possible accomplice to the murder, Walker lied to satisfy the police and to "save [his] own butt." Pet. Exh. A, p. 52. Walker was on parole at the time, and explained that he would have done "anything" to stay out of prison. Pet. Exh. A, p. 55. Walker said he also lied because he believed Gable had "snitched" on him by providing information to police which led to Walker and Gesner's arrests. Pet. Exh. A, p. 71.

Finally, Walker said, the police repeatedly interrogated and polygraphed him, causing him to gradually change his story in response to the polygraph results police reported to him. Walker stated that he told the truth at the first polygraph, but the polygrapher told Walker he did not believe Walker was truthful, that the case was serious, and that “if you don’t start cooperating . . . you’re going to be standing on the curb with [Gable] . . . Get on the bus now, or stand on the curb with [Gable], and you can go down with him.” Pet. Exh. A, p. 46.

Walker admitted that he lied under oath during Gable’s trial. He stated that Gable never confessed to the murder in his presence, and never told Walker that he “stuck” anyone. Pet. Exh. A, p. 37-38.

5. Daniel Walsh

Walsh testified at trial that Gable twice confessed to the murder, first in February or March 1989 when Walsh and Gable were talking about a knife Walsh purchased from Jerry Paul Baker, and then again several months later after an argument between Gable and Doug Stritchfield. Gable submits an affidavit from Walsh in which Walsh recants this testimony. Pet. Exh. A, p. 80. In the affidavit, Walsh avers that Gable never confessed to him and never threatened Walsh or his family. Pet. Exh. A, p. 81.

Walsh explains the investigative procedures which led to his testimony at trial:

When I was first interviewed in September of 1989, I truthfully told the Oregon State Police investigators that [Gable] never mentioned anything about the Michael Francke murder to me. However, in March of 1990, I was subjected to several consecutive days of aggressive police questioning and several polygraphs. At first, when I tried to maintain my earlier true statements, the police yelled at me and said that I was lying and that the polygraph results showed I was lying. The police asked me questions about topics I knew nothing about. I felt that the police were trying to brainwash me. I felt extreme pressure to incriminate [Gable]. Eventually, I told the

police what I thought they wanted me to say: that [Gable] had confessed to me the details of the murder.

Pet. Exh. A, p. 80-81. Walsh also stated that he received benefits for his testimony: the state paid for him to travel between Oregon and Ohio and covered the cost of hotel and food, that he was given immunity for past and present crimes, and that charges against him in Ohio “went away.” Pet. Exh. A, p. 81.

Gable also submits an affidavit from Cheryl Lowery, who was married to Walsh at the time of the murder and Gable’s trial.⁹ Lowery states:

Years after he testified for the prosecution at [Gable’s] trial, Dan Walsh admitted to me that he lied during his testimony and falsely implicated [Gable] in the murder of Michael Francke. I asked Dan why he lied. Dan Walsh told me that he lied and implicated [Gable] in the Francke murder because he was angry with [Gable]. In particular, Dan was angry because he felt [Gable] took advantage of us when he lived with us and had us drive him from Salem to Coos Bay at our expense.

Pet. Exh. A, p. 84.

6. Earl Childers

Childers testified at trial that he saw Gable in the vicinity of the Dome Building on the night of the murder. Childers also testified that Gable confessed to him. Gable submits an affidavit from Childers in which Childers now states, “[Gable] never told me that he killed Michael Francke.” Pet. Exh. A, p. 94. Childers also states that, while he is certain he saw a car he believed was Gable’s, it could have been similar, and that he is not certain Gable was in the car. Childers further states, “I was pressed (or pressured) by the Oregon State Police. They were angry when I wouldn’t tell them

⁹ Lowery testified as a defense witness at Gable’s trial. She said Gable never confessed to her and was always nice to her family, that Walsh never mentioned that Gable threatened their family, and that she left Walsh because he was a drug addict. Tr. 8477-82.

what they wanted to hear and when I refused to take a polygraph. They made me call my attorney in front of them and didn't give me any privacy.” Pet. Exh. A, p. 95.

7. Randy Studer

After Linda Perkins told the Task Force that Gable had confessed during a conversation that included Perkins, Gable, Studer, and Ross, Studer initially denied to the Task Force that Gable had confessed. Studer eventually corroborated Perkins's story and testified to it before the grand jury. However, Studer recanted on the eve of trial and the state did not call him as a witness. Gable submits an affidavit from Studer stating that Studer gave an untrue statement to the Oregon State Police that Gable confessed to murdering someone on the morning of January 18, 1989. Studer states that, if called to testify in a re-trial, he would testify that Gable never confessed to him that he murdered Michael Francke, that he is not aware of any involvement by Gable in the murder, and that Studer previously lied to the Oregon State Police. Pet. Exh. A, p. 31.

Studer states that he was first interviewed by police in September 1989, and at that time he told the truth, specifically, "that [Gable] never told me he was involved in the murder of Michael Francke." Pet. Exh. A, p. 29. Studer states he maintained his truthful story through numerous police interviews throughout 1989. Pet. Exh. A, p. 30. Studer explains why he changed his story:

8. During this time, the Oregon State Police administered numerous polygraph examinations. It did not seem to matter what answers I gave. When I told the truth during the examinations (*i.e.*, that [Gable] had never confessed to me), the examiner concluded that I was lying. It was not until I later changed my story to a lie implicating [Gable] in the murder, as described below, that the polygraph examiner concluded I was truthful.
9. Over time and under the pressure of police interrogation and polygraphs, I made the following statements that were untrue. First, I conceded that it was possible that, because I was using drugs, I was unable to recall [Gable's] confession although I knew [Gable] had never confessed to me. Second, I falsely told the Oregon State Police that Doug Stritchfield had not only confessed to the murder but had also implicated [Gable].

10. The Oregon State Police continued to insist that I confirm Ms. Perkins's story that [Gable] had confessed to me. I felt that they were shoving this theory down my throat.
11. In January 1990, I was charged with a serious offense. The District Attorney and Oregon State Police threatened me with a ten-year prison sentence. However, they offered me a suspended sentence with one year at the Marion County work release center if I testified against [Gable].
12. Facing this significant prison sentence, I did not feel that I had any choice but to agree to testify. I accepted the plea offer. I told the police what they wanted to hear. Specifically, I told the Oregon State Police that on the morning of January 18, 1989, [Gable] had confessed to murdering someone the previous evening. This statement was untrue. Nevertheless, the Oregon State Police conducted a polygraph examination and concluded the statement was truthful.

Pet. Exh. A, pp. 30-31.

8. Theresa Ross

Like Studer, Ross was not called to testify at trial. Also like Studer, Ross initially told the Task Force that she never heard Gable confess and that Studer never told her that Gable confessed, a statement which was deemed "truthful" during a polygraph examination. Pet. Exh. E, pp. 331-32. In February 1990, however, in an interview just after police confirmed Ross's involvement in a serious sexual abuse case involving a minor, Ross told police that she not only now remembered that Gable came to her house around the time of the Francke murder, but also that he said, "I fucked up, I've done all the time I'm going to do. I'm not going back in." Pet. Exh. E, p. 142.

Gable now submits an affidavit from Ross, in which she states: "[Gable] never confessed to me or in my presence that he was involved with the murder of Michael Francke." Pet. Exh. A, p. 33. Ross also states that "Linda Perkins, my mother, never heard [Gable] confess to the murder

of Michael Francke. She got involved because she likes to have her name in the limelight.” Pet. Exh. A, p. 33.

B. Scientific Evidence

In addition to the recantations described above, Gable submits scientific evidence in the form of the affidavit of David C. Raskin, Ph.D., who has conducted and published extensive scientific research in human psychophysiology. Pet. Exh. B. Dr. Raskin has conducted laboratory and field research on polygraph techniques for the detection of deception, has taught university and applied courses about polygraph techniques, has trained government and law enforcement polygraph examiners, has published extensively on polygraph techniques, and has served as an expert witness in approximately 250 criminal and civil cases in federal and state courts in the United States and elsewhere. Pet. Exh. B, p. 1.

Dr. Raskin reviewed the multitudinous polygraph examinations which took place in the investigation of this case and concluded: “[i]t is abundantly clear that polygraph testing procedures conducted in this investigation were fundamentally and seriously flawed.” Pet Exh. B, p. 16. Dr. Raskin noted that problems in administering the tests, such as examiners confronting witnesses and repetition of tests, were pervasive. Pet. Exh. B, p. 5, 11. Further, he noted that the polygraph test formats employed have been shown in scientific studies to be invalid, and that the American Polygraph Association views them as unreliable. Pet. Exh. B, p. 4-5. According to Dr. Raskin, the Task Force improperly used polygraphs as a “psychological club . . . to elicit statements from witnesses.” Pet. Exh. B, p. 16-17.

Dr. Raskin opines that the investigator's actions were highly likely to produce false polygraph results and, ultimately, false witness statements. According to Dr. Raskin, the problems with the polygraphs "were greatly exacerbated by investigators coercing examinees to create false statements," which happened through the provision of "information to examinees what [investigators] wanted them to state, telling [subjects] that they were lying when they were actually truthful by not giving desired responses, abusive and frightening interrogations, serious threats of prosecution and prison, threats concerning their children and families, promises of rewards, and actual rewards." Pet Exh. B, p. 16. Dr. Raskin concludes that, "[a]s a result, the unethical and flawed polygraph testing procedures combined with improper and coercive interrogations appear to have provided the means to shape their statements in order to obtain false testimony from the examinees." Pet. Exh. B, p. 16.

IV. Hearing on Gable's Petition

On November 22, 2016, the court conducted a hearing on Gable habeas corpus petition ("Hearing"). At the outset of the Hearing, the court stated the issues the parties were to address, to include:

[T]he necessity and propriety of an evidentiary hearing on the issue of excusing procedural default, whether based upon *Schlup v. Delo*, 513 U.S. 298, 1995, or *Martinez v. Ryan*, 132 S. Ct. 1309, 2012. In particular, the parties should address the need for the Court to make witness credibility determinations; the logistics of conducting an evidentiary hearing, if necessary, including the need to secure the appearances of witnesses at such a hearing, and petitioner's presence; and, finally, whether the DNA test results would need to be discussed as part of any evidentiary hearing.

(Transcript of November 22, 2016 Oral Argument (ECF No. 165)(hereafter "Hrg. Tr.") 4. Gable's attorneys made these responses to this question:

MS. BROWN: . . . [O]ur position is that there does not need to be an evidentiary hearing because the evidence in the record before the Court now gives the best information about the credibility of the recantations versus the credibility of the trial testimony, and it's looking through the lens of the investigation that produced the recanted trial testimony which we claim was false. . . .

THE COURT: So let me interrupt, please, and just make this observation: With respect to the question in the minute order, the necessity and propriety of an evidentiary hearing, your first response is we don't need a hearing at all.

MS. BROWN: We don't need a hearing at all if Your Honor agrees with us that the record before the Court establishes innocence under *Schlup* because that would then excuse the default on each and every claim that is defaulted.

(Hrg. Tr. 8-9.)

In its response to this question, the state pointed out that under controlling precedent, the court first had to determine whether the new evidence Gable presented was reliable; because, based on the record, if it was not, the inquiry ended there and no hearing should be conducted. (Hrg. Tr. 16-19.) The court and the state's attorney then engaged in this exchange:

MR. KALLSTROM: [W]e believe, on the existing record, the Court can find that these recantations are not credible and that petitioner has failed to meet his burden under *Schlup* [v. *Delo*, 513 U.S. 298, 327 (1995)].

THE COURT: If I find that petitioner has met his burden under *Schlup*, then do you agree or disagree that I can make my review on the existing record without a hearing?

MR. KALLSTROM: Your review of the actual innocence?

THE COURT: Yes.

* * * *

THE COURT: . . . My point is I – I would like to get your response to the question I asked Ms. Brown of whether we need a hearing, an in-court hearing, at all, or whether everything can be done on paper.

MR. KALLSTROM: Our position is that – that you can find these recantations to be not credible on the existing record.

(Hrg. Tr. 19, 21.)

Accordingly, the court then heard counsels’ arguments regarding the reliability of Gable’s new evidence and its effect, if any, that evidence would have on a reasonable jury.¹⁰

DISCUSSION

I. Colorable Claim of Actual Innocence to Excuse Procedural Default

A. Legal Standards

A procedurally defaulted claim may be heard on the merits if the petitioner demonstrates that failure to consider the claim will result in a fundamental miscarriage of justice, meaning that ““a constitutional violation has probably resulted in the conviction of someone who is actually innocent.”” *Schlup*, 513 U.S. at 327 (quoting *Murray v. Carrier*, 477 U.S. 478, 496 (1986)). In asserting actual innocence, a petitioner must “support his allegations of constitutional error with new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial.” *Schlup*, 513 U.S. at 324.

A court considering whether a petitioner has established actual innocence in light of that “new reliable evidence” must consider “all the evidence, old and new, incriminating and exculpatory, admissible at trial or not.” *Lee v. Lampert*, 653 F.3d 929, 938 (9th Cir. 2011) (en banc) (internal quotation marks omitted). An actual innocence analysis “requires a holistic judgment about all the evidence and its likely effect on reasonable jurors applying the reasonable-doubt standard;” in other

¹⁰ During the Hearing, Gable’s attorneys illustrated portions of their analysis of the evidence with a Power Point presentation. (ECF No. 163 and attachments 1 and 2.)

words, the federal court must “make a probabilistic determination about what reasonable, properly instructed jurors would do.” *House*, 547 U.S. at 538-39 (internal quotation marks omitted). A court must assess the “likely impact” of the new reliable evidence on “reasonable jurors in light of the complete record.” *Lee*, 653 F.3d at 945.

When evaluating a claim under *Schlup*, the court is not limited to considering only admissible evidence. Rather, “a habeas court must consider all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial.” *House*, 547 U.S. at 538 (quoting *Schlup*, 513 U.S. at 327). As Judge Kozinski explained in his dissenting opinion in *Carriger v. Stewart*, 132 F.3d 463, 485-86 (9th Cir.1997) (en banc), in evaluating a claim of actual innocence, a habeas court is required to posit a hypothetical jury that is entitled to consider both admissible and inadmissible evidence, so long as the inadmissible evidence is reliable.

To apply the actual innocence exception, a court must conclude that, “in light of all of the evidence, ‘it is more likely than not that no reasonable juror would have found [the petitioner] guilty beyond a reasonable doubt.’” *United States v. Avery*, 719 F.3d 1080, 1083 (9th Cir. 2013) (quoting *Schlup*, 513 U.S. at 327). This is a particularly exacting standard, one that will be satisfied “only in the extraordinary case.” *House*, 547 U.S. at 538 (internal quotation marks omitted). Indeed, cases where the *Schlup* standard has been satisfied have “typically involved dramatic new evidence of innocence.” *Larsen v. Soto*, 742 F.3d 1083, 1096 (9th Cir. 2013). However, because a *Schlup* claim is, by definition, accompanied by “an assertion of constitutional error at trial,” the petitioner’s

conviction “may not be entitled to the same degree of respect as one . . . that is the product of an error-free trial.” *Schlup*, 513 U.S. at 316.

B. Analysis

Upon careful review of the voluminous record in this case and considering all of the evidence, both old and new and with due regard for its reliability, the court concludes that Gable has made a colorable showing of actual innocence sufficient to overcome his procedural default. Although the evidence presented at trial in 1991 resulted in a guilty verdict, the court concludes that it is more likely than not that no reasonable juror would find Gable guilty in light of the totality of all of the evidence uncovered since that time, particularly the newly presented evidence of witness recantations.

At the outset, the court recognizes that “[a]s a general matter, ‘recantation testimony is properly viewed with great suspicion.’” *Jones v. Taylor*, 763 F.3d 1242, 1248 (9th Cir. 2014) (quoting *Dobbert v. Wainwright*, 468 U.S. 1231, 1233 (1984) (Brennan, J., dissenting from denial of certiorari)); *see also Herrera v. Collins*, 506 U.S. 390, 417 (1993) (explaining that “motions based solely upon affidavits are disfavored because the affiants’ statements are obtained without the benefit of cross-examination and an opportunity to make credibility determinations).

In *Jones*, the Ninth Circuit found the petitioner did not meet *Schlup*’s actual innocence standard because there was no evidence to corroborate the truth of the witness recantations. Moreover, the circumstances of the recantations persuaded the court that they were insufficient to prove the petitioner’s innocence. Specifically the recantations all came from the petitioner’s family

members, which reduced their weight and reliability, and all three witnesses came forward with changed stories at approximately the same time, and years after trial. *Jones*, 763 F.3d at 1249.

The circumstances of the recantations here differ materially from the circumstances of the *Jones* recantations. Here, none of the recanting witnesses are related to Gable, but instead were merely acquaintances of Gable in the drug and criminal world of Salem over two decades ago; they have no personal relationship with Gable today. To the contrary, many of the recanting witnesses had an antagonistic relationship with Gable at the time of their testimony, including Walker and Gesner, who both believed Gable's cooperation with police had led to their own arrests, and Childers, who claimed Gable owed him money.

Moreover, the recantations in this case did not all occur at the same time, long after trial, without explanation, but occurred at different times following Francke's murder, and were accompanied by explanations. Indeed, both Studer and Swearingen recanted their stories about Gable's involvement *prior* to trial. Witnesses said that Harden, Walker, and Keerins had also admitted prior to trial that their testimony against Gable would be false. Tr. 8543-50, 8563-66, 8582-84, 8594-96, 8613-18, 8520-27. Although she did not testify at trial, Gesner's girlfriend told police before trial that Gesner admitted that he lied to police by implicating Gable. Pet. Exh. E, pp. 446-49. Walker provided a detailed recantation in the 1993 interview. Pet. Exh. A, p. 86.

Most of the various recantations also share a common theme: the use of similar coercive interrogation tactics and polygraph examinations to secure their incriminating statements. Cappie Harden says, "The police questioned and polygraphed me many times[.] I initially told the truth, which was that I was not an eyewitness to the Francke murder. However, after the police threatened

me and my family I eventually adopted the false story to which I testified at Grand Jury trial.” Pet. Exh. A, p. 9.

In an affidavit prepared at the time of Gable’s PCR proceedings (which she recently re-affirmed), Jody Swearingen describes being interviewed several hours at a time and being subjected to polygraph examinations one, two, and even three times a day. Pet. Exh. A, p. 23. She relates that during the polygraph tests, the police were “telling me which tests they felt were right and which were wrong. . . . I would tell them the truth and they would say I was lying. I told them what they wanted to hear, and they said that I was telling the truth when in fact it was lie.” Pet. Exh. A, p. 23.

Studer relates a similar experience. Despite his initial statement in September 1989 that Gable never told Studer he was involved in the murder, Oregon State Police continued to question Studer throughout October, November, and December of 1989, and again in Spring 1990. Pet. Exh. A, p. 30. As Studer describes it:

During this time, the Oregon State Police administered numerous polygraph examinations. It did not seem to matter what answers I gave. When I told the truth during the examinations (*i.e.*, that [Gable] had never confessed to me), the examiner concluded that I was lying. It was not until I later changed my story to a lie implicating [Gable] in the murder . . . that the polygraph examiner concluded I was truthful.

Pet. Exh. A, p. 30.

Daniel Walsh’s affidavit reveals a similar experience. When first interviewed in September 1989, he states he truthfully told the investigators that Gable never mentioned anything about the Francke murder to him. Pet. Exh. A, p. 80. However, in March 1990 investigators subjected him to “several consecutive days of aggressive police questioning and several polygraphs.” Pet. Exh. A, pp. 80-81. Walsh’s description of these examinations mirrors the other witnesses’ descriptions:

At first, when I tried to maintain my earlier true statements, the police yelled at me and said that I was lying and that the polygraph results showed I was lying. The police asked me questions about topics I knew nothing about. I felt that the police were trying to brainwash me. I felt extreme pressure to incriminate [Gable]. Eventually, I told the police what I thought they wanted me to say: that [Gable] had confessed to the details of the murder.

Pet. Exh. A, p. 81.

Finally, Earl Childers says he “was pressed (or pressured) by Oregon State Police. They were angry when I wouldn’t tell them what they wanted to hear and when I refused to take a polygraph.”

Pet. Exh. A, p. 95.

These witnesses’ descriptions of the tactics used during their respective interrogations and polygraphs not only parallel and support one another, they also raise a material question, according to Dr. Raskin, about the reliability of the results obtained through those tactics. Dr. Raskin analyzed the records of the police interrogations and concluded that the Task Force’s concerted use of “guilt-presumptive” interrogation practices, along with its improper use of polygraphs, was highly likely to, and did, produce false testimony. Pet. Exh. B, pp. 5-6. Dr. Raskin’s opinion provides additional evidence to corroborate the truth of the witnesses’ respective recantations.

Dr. Raskin identified the interrogation technique the Task Force employed as the “Reid Method,” which is designed to use psychological coercion to influence the witness’s cost-benefit analysis. Pet. Exh. B, pp. 5-6. The technique applies stress and pressure to the witness “to weaken the [person’s] resistance [to confession] by increasing the anxiety associated with denial and reducing the anxiety associated with confession.” Pet. Exh. B, p. 5. Such “[c]oercive interrogation techniques increase the likelihood of eliciting false information from a subject.” Pet. Exh. B, p. 5.

The same processes also can be expected to produce false testimony by incentivizing witnesses. Pet. Ex. B, p. 8.

Dr. Raskin also reviewed the polygraph examinations administered in the case. First, Dr. Raskin noted that most of the polygraph examinations described in the reports he reviewed employed test protocols that have been shown to be invalid or are not approved by the American Polygraph Association and the Federal Government. Pet. Exh. B, p. 4. These included the “Yes-No” protocols where the examinee answers the same question twice, one time ‘Yes’ and the other time ‘No[,]’ the Statement Verification protocol “where the examinee made a statement and was tested on the truthfulness of the statement[,]” the Reid General Series protocol or Relevant-Irrelevant Test, which includes only relevant and irrelevant questions but no comparison questions, and the Peak-of-Tension test where the examinee “is asked a question and presented with a series of alternative answers . . . [t]he examiner tries to determine the correct alternative by looking for the item with the strongest polygraph reaction.” Pet. Exh. B, p. 4.

In addition to the use of invalid test protocols generally, Dr. Raskin’s review also identified four serious problems with the administration of the individual examinations which increased the risk of error. First, “[a] polygraph should not be conducted if the subject has been interrogated that day, including if the subject is interrogated during the pre-test.” Pet. Exh. B, p. 5. Second, “[i]f an examiner confronts the examinee and accuses the examinee of lying, the examiner is no longer acting as an objective professional, but rather as an adversary. This tends to make examinees believe they are not being treated fairly . . . [and] [a] different examiner should conduct any additional testing.” Pet. Exh. B, p. 5. Third, “[t]he more a person is tested, the less reliable are the results of the repeated testing.” Pet. Exh. B, p. 5. Fourth, “[r]epeated testing of the same individual combined with

confrontations and interrogations increases the risk that the person will provide a statement that the person feels the examiner wants to hear, even if it is not accurate.” Pet. Exh. B, p. 5.

Applying these principles here, Dr. Raskin noted that each of the material witnesses was polygraphed multiple times in a single day or multiple times over the course of several days. Pet. Exh. B, p. 11 n.19. Investigators polygraphed Swearingen twice in one day on six different occasions, and three times in a single day on a separate occasion; and during one period of time ten times in five days, and on two other occasions three times over course of two days. Pet. Exh. B, pp. 11-12 n.19. Investigators polygraphed Gesner and Studer three times each in a single day, and Walsh, Childers, Keerins, and Harden twice in a single day. Pet. Exh. B, p. 12 n.19. At one point, Harden took four polygraphs over the course of five days.

Specifically as to Swearingen, Dr. Raskin noted that investigators gave her 23 polygraphs in 12 separate sessions, and that she was “administered multiple polygraphs on at least 7 different days.” Pet. Exh. B, p. 12. On numerous occasions, investigators “confronted” her with supposed defective responses. Pet. Exh. B, p. 12. For example, Swearingen was polygraphed nine times by Detective Ackom between January 16 and 19, 1990. Pet. Exh. B, p. 12. Ackom confronted her, telling her that she was lying and that he “knew” the truth about certain facts, such as when and how she arrived in Salem on the day of the murder, and that she was at the Dome Building. Dr. Raskin explains the difficulty with this technique:

These “known” facts appear to have resulted from Ackom’s reliance on flawed polygraphs. First, Ackom stated that an earlier “confirmatory [polygraph] test showed that the subject [Swearingen] was, in fact, an eye witness to the murder.” Even putting aside that the test was invalid, it is unethical for an examiner to state that a confirmatory polygraph test establishes a fact. Second, Ackom’s belief in how and when Swearingen arrived in Salem were based on two Peak of Tension tests that were used as if they were so-called “silver bullets” that could establish the truth of

collateral details. No competent examiner would rely on the accuracy of such tests. Despite her earlier statements to the contrary, Swearingen eventually adopted Ackom's version of these events. Further polygraphs and interviews with Swearingen appeared to have been directed at conforming the details of her statements to match those being elicited from Cappie Harden.

Pet. Exh. B, p. 12.

With regard to the number of times Swearingen was polygraphed, Dr. Raskin states, "I have never seen this many tests administered to one person in the 43 years I have been working in this field." Pet. Exh. B, p. 15. Dr. Raskin opined that the pattern of interrogation and confrontation combined with the sheer number of tests would have produced flawed polygraph results for Swearingen. Pet. Exh. B, p. 15. "The more a person is [polygraph] tested, the less reliable are the results of the repeated testing." Pet. Exh. B, p. 15.

Dr. Raskin described similar flaws in the polygraph examinations of the other witnesses. During his first two polygraphs, Gesner denied any knowledge about the Francke murder or that Gable had confessed to him. Pet. Exh. B, p. 12. Dr. Raskin explains that once Ackom "confronted" Gesner with polygraph results suggesting Gesner was at the scene of the crime and participated directly in killing Francke, Gesner changed his story and claimed Gable confessed to him. Pet. Exh. B, p. 12. Gesner changed his story and claimed Gable had confessed, but continued to deny any other involvement. Pet. Exh. B, p. 12. Ackom polygraphed Gesner again and confronted him about being deceptive about helping Gable dispose of evidence, to which Gesner responded that he had verbally told Gable how to dispose of clothing and a gun, but didn't participate personally. Pet. Exh. B, p. 12-13. Finally, after another polygraph followed by Ackom confronting again, Gesner said that

Gable had given him a bag of evidence which Gesner threw off a bridge into the Willamette River.

Pet. Exh. B, p. 13.¹¹

Dr. Raskin concluded that the polygraph testing procedures the investigators used were “fundamentally and seriously flawed.” Pet. Exh. B, p. 16. Coercive interrogation tactics exacerbated these problems and, as a result, “the unethical and flawed polygraph testing procedures combined with improper and coercive interrogations appear to have provided the means to shape their statements in order to obtain false testimony from the examinees.” Pet. Exh. B, p. 16.

The witnesses’ recantations are further supported by other evidence in the record. As Gable’s lawyers pointed out at the Hearing, Harden and Swearingen both claimed to have been at the scene together and witnessed Francke’s murder, but their respective accounts of the altercation significantly conflicted. For example, they could not agree whether they were together in Harden’s car or separate at the time of the altercation (*compare* Tr. 8065-68 *with* Tr. 9329, 9367-69), and could not agree on where they went after witnessing the altercation (*compare* Tr. 8071 (the two went to Harden’s house) *with* Tr. 9340-41, 9367 (the two went to the Hyacinth house)).

Both Harden’s and Swearingen’s accounts conflicted with Wayne Hunsaker’s testimony, the only witness the investigators interviewed who appeared to be objective and unbiased, because he did not know Gable or any of the other witnesses. For example, Harden said that from his car, he saw the assault occur directly next to Francke’s car and described seeing Gable lunge out of the car at Francke; Hunsaker did not see Harden’s car or any other car near the altercation. Tr. 6989, 8070.

¹¹ Dr. Raskin also discusses how other witnesses – Harden, Studer, Walker, and Walsh – all changed their statements after they each experienced similar polygraphing techniques and confrontations. Pet. Exh. B, pp. 12-14.

Hunsaker testified that other than the two men he described (Francke and his assailant), Hunsaker did not see anyone else in the area. Tr. 6898, 9169-70, 9173-94.

If Harden's trial testimony is credited, Gable would have run from the scene directly past Harden's blue Mustang as Harden attempted to hot-wire the car to start it, yet Hunsaker makes no mention of seeing or hearing the Mustang driving out of the parking lot as he watched the assailant flee. Tr. 8070. Similarly, from her location as a "look-out" on the OSH grounds, Swearingen's testimony would have her running past the altercation to get to Harden's car, yet she makes no mention of having done this and, again, Hunsaker testified he did not see anyone else.¹²

Finally, there is the matter of the evidence of third-party guilt. Specifically, the investigators' interview of John Lee Crouse on April 5, 2019, less than three months after the murder. As described above, Crouse's detailed account of his altercation with Francke is notable for its specificity and because, where the record exists to corroborate it, his account is consistent with the physical evidence, Hunsaker and other witnesses' testimony, and Francke's physical characteristics.

For example, Crouse explained he decided to burgle a car, which turned out to be Francke's, when he walked by and "saw stuff in it." Francke's car in fact contained many items at that time. State workers who walked by Francke's car after the altercation had occurred testified they saw the car door standing open, and inside were clothes, books, and other things "strewn" in the back, as well as a car phone mounted on the dash in the vehicle.

¹² At the Hearing, Gable's lawyers used a Power Point presentation that included diagrams of the OSH grounds, and which visually illustrated and compared Hunsaker's, Harden's, Crouse's, and Swearingen's positions at the time of the murder, according to their respective accounts. *See* ECF Nos. 163-1, pp. 6-20, 23-35; 163-2, pp. 1-34.

Crouse also described the altercation in detail, including how he used the knife, where on Francke's body he stabbed Francke, how he did it, and the angle at which he stabbed Francke. Crouse recalled striking Francke with the knife in the arm and chest, a description consistent with the knife wounds Francke suffered. Crouse also said he hit Francke a "round house" punch with his right hand to the left side of Francke's face, an act that corresponds to the abrasions on Francke's left occipital region and forehead, abrasions that remained unexplained at trial.

Crouse also gave a reasonably accurate physical description of Francke. He described the individual he encountered as 6' to 6'3" tall and about 170 pounds, which is consistent with Francke's actual height and weight of 6'3", 200 to 210 pounds. Crouse also described Francke's apparent – and surprising to Crouse – strength, which Crouse cites as the reason he ultimately decided to pull out his knife. Crouse describes Francke punching him with enough force that he almost knocked out Crouse, an amount of strength consistent with other witnesses' descriptions of Francke's physical characteristics. Finally, the route Crouse said he took to leave the scene after the altercation matches the precise route Hunsaker saw one of the individuals take, including down to the detail of running down the driveway to a point near a large generator.

There is no evidence in the record that Crouse had any connection whatsoever with Gable, Swearingen, Harden, or any other member of the group of Gable's acquaintances. Yet, less than three months after Francke's murder, before any witness accounts emerged which described the altercation, Crouse knew a plethora of physical details about events immediately before, during, and immediately following the altercation that he could not have known unless he killed Francke.

The court recognizes that, like many other witnesses in this case, Crouse gave conflicting stories and ultimately recanted his confession to investigators, but at least four facts support the

reliability of Crouse's confession. First, the investigator's contemporaneous notes taken of Crouse's interview indicate that, unlike with the other stories he related about the incident, when Crouse confessed about the attempted car break-in and ensuing altercation he appeared "spontaneous and smoothly spoken[,] and "had no hesitation in answering questions, as he did in earlier statements," which had appeared to be untruthful. Resp. Exh. 179, p. 79. Second, the only neutral polygrapher to examine Crouse found him not deceptive in answering "no" when asked whether he lied to police about stabbing Francke. Resp. Exh. 179, p. 10-12. Third, in an April 5, 1989, telephone call to his brother, Crouse confessed to having killed Francke and described how the altercation unfolded, consistent with his April 5, 1989 confession to Martinak. Resp. Exh. 179, p. 76. Fourth, Crouse admitted to the murder on five separate occasions to four different people in April 1989: once to Martinak on April 4, once to Martinak on April 5, once to his brother on April 5, once to Martinak and Pecyna on April 13, and once to the FBI polygraph examiner on April 19. Resp. Exh. 179, p. 10-12.

In sum, upon consideration of all of the evidence, both old and new, and with due regard to its reliability, the court concludes that Gable has made a colorable showing of actual innocence sufficient to excuse procedural default. In light of the totality of the evidence, including the newly presented evidence, the court concludes it is more likely than not that no reasonable juror would find Gable guilty beyond a reasonable doubt of the crimes charged. Having reached this conclusion, the court considers Gable's underlying constitutional claims.

II. Exclusion of Evidence of Third-Party Guilt

Gable alleges the trial court violated his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution by excluding evidence of third-party guilt. Gable

further alleges he was denied the effective assistance of trial counsel under the Sixth and Fourteenth Amendments when his trial attorneys failed to present legal support, including citation to federal law, in support of admitting evidence of third-party guilt.

Because the two issues are inextricably intertwined, and because of the procedural posture of the claims, the court considers them together. Moreover, because neither claim has been adjudicated on the merits in state court, review in this court is *de novo*. *Dickens v. Ryan*, 740 F.3d 1302, 1321 (9th Cir. 2014) (en banc).

A. The State Court Proceedings

At trial, Gable sought to admit the hearsay statements of Crouse admitting to the murder as statements against Crouse's penal interest. To do so under Oregon evidence rules, Gable had the burden of demonstrating, *inter alia*, that Crouse was "unavailable" to testify and that "corroborating circumstances clearly indicate[d] the trustworthiness of [Crouse's] statements." OR. EV. C. 804(3)(c).

During trial, in response to the state's motion in limine, the court held a Rule 104 hearing outside the presence of the jury to determine the relevancy and admissibility of the Crouse evidence. The defense called Crouse to the stand and asked, first, whether Crouse was represented by an attorney and whether the attorney was present at the hearing. Tr. 9487. Crouse answered affirmatively to both questions. Tr. 9487. Defendant Counsel then asked, "In [sic] January 17, 1989, did you kill Michael Francke?" Tr. 9487. Crouse answered, "No." Tr. 9847. Defense counsel then asked a series of questions, including whether Crouse had been on the OSH grounds near the Dome Building on January 17, 1989; whether on April 4, 1989, Crouse admitted to Pecyna and Martinak that he murdered Francke; and about the details of his confessions. Tr. 9487-89. In response to each

of these questions, Crouse invoked his Fifth Amendment privilege against self-incrimination. Tr. 9487-89.

In light of Crouse's invocation of his Fifth Amendment privilege, defense counsel requested that Crouse be declared "unavailable" as a witness. The state apparently had been prepared to stipulate to Crouse's unavailability, but Crouse's answer to defense counsel's first question changed the state's position. Tr. 9489-90. The state argued that Crouse, in fact, was "available" to testify because he responded "no" when asked whether he had killed Francke.

Both Crouse's attorney and Gable's defense counsel argued that Crouse did not understand defense counsel's first question and intended to invoke the Fifth Amendment from the outset. Tr. 9490-91. In fact, Crouse's attorney stated that Crouse had "intended to invoke his Fifth Amendment rights to that [initial] question and would invoke his Fifth Amendment rights in front of the jury." Tr. 9492. The trial court rejected the argument, stating they could not "go back to un-ringing the bell" and that "if [Crouse] were to be called as a witness sometime before this trial ends and he were to attempt to invoke his Fifth Amendment to the same question that he has answered here this morning, I would tell him that he cannot do that. I would tell him to answer the question. He has previously answered it under oath." Tr. 9497, 9505. The trial court concluded by observing: "[Crouse] knew what the question was, and he answered it. He didn't invoke his Fifth Amendment privilege." Tr. 9500. Thus, as to the subject matter of the hearsay statements that defense counsel sought to admit (i.e., whether Crouse had murdered Francke), the trial court found Crouse was "available" to testify. Tr. 9511.

The state, apparently in an attempt to prevent Gable's or Crouse's respective lawyers from introducing Crouse's confession for any purpose, first argued that because Crouse not only was

“available” to testify and denied killing Francke, any evidence the defense offered to challenge that denial could be admitted only for impeachment purposes, and could not be considered by the jury substantively. Tr. 9493. The state then argued that, in light of Crouse’s denial that he killed Francke, impeachment evidence would be irrelevant in any event:

The bottom line is [Crouse] said in this courtroom this morning under oath he did not kill Mr. Francke, and if [defense counsel] wants to go down the road in some way trying to elicit these other statements that he is taking the Fifth on, I suppose he can pursue [sic] that route. But the state’s position at that point is basically that they’re impeachment. Because they are impeachment, they are not substantive. Because they’re not substantive, the jury cannot rely on them as substantive evidence and, therefore, this man has basically told this Court today under oath what he told the Grand Jury under oath which is he – I did not kill Michael Francke, therefore, his testimony in this proceeding is irrelevant.¹³

Tr. 9495.

The defense responded that for two reasons the Crouse confession should be admitted as impeachment evidence. First, as to Crouse’s denial that he killed Francke, the defense should be “entitled to impeach with inconsistent statements.” Tr. 9498. Second, as to any of the other questions Crouse refused to answer based on privilege, he should be considered “unavailable” as to those issues.

The trial court initially agreed with defense counsel that Gable was “entitled to present” through police officer witnesses evidence of Crouse’s confessions, to allow the jury to determine whether Crouse told the truth or lied when he denied killing Francke:

I think you’re entitled to do that through other witnesses. But if [Crouse] wants to invoke his privilege, I think given the spectrum of perjury in unsworn statements,

¹³ Defense counsel objected to the prosecutor’s characterization of Crouse’s testimony before the grand jury because the grand jury proceedings were secret and not part of the record before the court.

hindering prosecution, all of those kind of things, I have to allow him to invoke his Fifth Amendment privilege if he cares to do that. . . . Certainly you can put that on by way of impeachment and the jury is going to hear it, but not as substantive evidence.

If I understand this Rule correctly, they're going to hear it and they can use all of that in determining if he is telling the truth or not if he answers that question in front of them.

Tr. 9502-03.

The state then renewed its argument that because Crouse now denied he murdered Francke, that denial rendered irrelevant any evidence of third-party guilt:

THE PROSECUTOR: Basically, if [Crouse] is testifying as he did today under oath and as he has in the past under oath, that he did not kill Michael Francke, it's not relevant evidence to go to the jury because if you allow the Court or allow [defense counsel] to impeach, the jury cannot rely on that impeachment as substantive evidence. The trier of fact cannot rely on that as substantive evidence to render a verdict in this case, therefore, you have somebody testifying I did not kill Michael Francke, it's not relevant to the – these proceedings and, therefore, not admissible.

THE COURT: I want to get back to that as a threshold issue. You're suggesting that even calling him as a witness and putting him on the stand, if he answers that question the same that the answer is today, it's not relevant?

THE PROSECUTOR: That's my position.

THE COURT: So we never get to all of the rest of the issues because you can't impeach what he doesn't testify?

THE PROSECUTOR: Exactly.

Tr. 9508-09.

The trial court adopted the state's reasoning and excluded all evidence related to Crouse, stating:

I think the first thing that I have to rule on is whether or not Mr. Crouse is available or not based on Rule – the 104 Rule hearing we had yesterday morning. And given

his answer to the first question that he was asked, I find that he is available as a witness.

Thereafter, having found that based again on the evidence at the hearing the answer to the question that he was asked would be irrelevant to this jury. Given that I find that the answer is irrelevant, there won't be any testimony to be presented to the jury so there won't be any need to impeach his testimony, he didn't give any testimony to the jury, the trier of the fact.

Tr. 9511. As noted previously, Gable asserted on direct appeal a claim that the trial court erred in excluding the Crouse evidence. This argument, however, relied only on state law.

B. Analysis

The Sixth Amendment to the United States Constitution guarantees the right of a criminal defendant to have a public trial, to confront witnesses against him, and to obtain witnesses in his favor. *Lunberry v. Hornbeak*, 605 F.3d 754, 760 (9th Cir.), *cert. denied*, 562 U.S. 1102 (2010). These guarantees are incorporated by the Due Process Clause of the Fourteenth Amendment, binding the states. *Id.* The process due under the Fourteenth Amendment includes a right to ““a meaningful opportunity to present a complete defense.”” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). That constitutional right may be violated by the exclusion of probative admissible evidence that another person may have committed the crime. *Chambers v. Mississippi*, 410 U.S. 284, 302-03 (1973).

In *Chambers*, the defendant sought to introduce the testimony of three different third-parties who would testify that another man had confessed to committing the murder of which the defendant had been accused. *Id.* at 298. The trial court ruled the evidence inadmissible. *Id.* at 289-93. The Mississippi Supreme Court upheld the exclusion of the evidence because it was hearsay and not

subject to exception under state evidentiary rules which, at that time, recognized only declarations against pecuniary interest, not penal interest. *Id.*

The Supreme Court determined that “under the facts and circumstances” of that case, exclusion of the evidence violated Chambers’s constitutional rights. *Id.* at 303. Stating that “[f]ew rights are more fundamental than that of an accused to present witnesses in his own defense,” the Supreme Court noted that the rejected testimony “bore persuasive assurances of trustworthiness” and that the “testimony also was critical to Chambers’ defense.” *Id.* at 302. The Court concluded that “[i]n these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.” *Id.*

In *Green v. Georgia*, 442 U.S. 95, 96 (1979), during the penalty phase of a capital case the trial court excluded as hearsay a third-party account of a confession from a co-defendant. The Supreme Court held that, “[r]egardless of whether the proffered testimony comes within Georgia’s hearsay rule, under the facts of this case its exclusion constituted a violation of the Due Process Clause of the Fourteenth Amendment.” *Id.* at 97. The Court explained that “[t]he excluded testimony was highly relevant to a critical issue in the punishment phase of the trial, and substantial reasons existed to assume its reliability.” *Id.* (citation omitted). Accordingly, the Supreme Court held the exclusion of the evidence denied the defendant a fair trial. *Id.*

The Ninth Circuit has applied the reasoning of the *Chambers* and *Green* decisions to grant habeas relief in similar situations. In *Lunbery*, a woman was prosecuted for her husband’s murder and sought to introduce evidence that the murder in fact had been committed by the partners of a drug dealer who previously lived in the couple’s home. *Lunbery*, 605 F.3d at 758. The trial court excluded testimony supporting the woman’s claim, finding that evidence inadmissible hearsay

without “sufficient indicia of reliability,” and “prejudicial to the prosecution with only slight probative value.” *Lunbery v. Hornbeak*, No. CIV S-07-1279, 2008 WL 4851858, at *17-18 (E.D. Cal. Nov. 10, 2008).

On appeal, the Ninth Circuit reversed. It held that “by the exclusion of probative admissible evidence that another person may have committed the crime,” the trial court violated the defendant’s right to present a defense. *Lunberry*, 605 F.3d at 760. The court noted that, “[a]s in *Chambers*, the excluded testimony here ‘bore persuasive assurances of trustworthiness’ and ‘was critical to [the defendant’s] defense.’” *Id.* at 761.

Likewise, in *Cudjo v. Ayers*, 698 F.3d 752 (9th Cir. 2012), *cert. denied*, 569 U.S. 1013 (2013), the Ninth Circuit found the trial court violated the defendant’s right to present an adequate defense when it excluded evidence that another person committed the murder for which the defendant was charged. In *Cudjo*, the petitioner sought to present evidence that his brother was the true culprit, having confessed to a fellow inmate while incarcerated. *Id.* at 755-56. Because the brother invoked his privilege against self-incrimination, Cudjo attempted to call the inmate to testify about the brother’s purported confession, but the state court excluded the testimony. *Id.*

The Ninth Court noted in *Cudjo* that, as in *Chambers*, *Green*, and *Lunbery*, the evidence at trial pointed to a single person committing murder, and the issue of the case was the identity of the murderer. *Id.* at 765. The petitioner in *Cudjo* “endeavored to develop two grounds of defense’: that he did not kill the victim, but that an identifiable other person did.” *Id.* (quoting *Chambers*, 410 U.S. at 288-89). The Ninth Circuit concluded that the exclusion of the confession, which the California Supreme Court had determined was probably true and had occurred under circumstances

providing substantial assurances that the confession was trustworthy, violated the petitioner's right to present an adequate defense.¹⁴ *Id.*

As did the evidence in *Chambers*, *Green*, *Lunbery*, and *Cudjo*, in this case the evidence at trial pointed to a single person, Gable. As did the petitioners in *Chambers*, *Green*, *Lunbery*, and *Cudjo*, in this case Gable endeavored to develop the same two grounds of defense: that he did not kill Francke but that an identifiable other person did. As did the identifiable other persons in *Chambers*, *Green*, *Lunbery*, and *Cudjo*, in this case the identifiable other person, Crouse, had previously confessed to the crime – and not merely once, but four separate times on four different days during a two-week period. As did the trial courts in *Chambers*, *Green*, *Lunbery*, and *Cudjo*, in this case the trial court's application of state hearsay rules prevented Gable from presenting evidence of Crouse's confession.

Further, as in both *Chambers* and *Lunbery*, and viewed within the actual innocence framework set forth above, Crouse's statements "bore persuasive assurances of trustworthiness": he made them multiple times shortly after the murder, he made them to different people and in different contexts and circumstances, and other evidence in the case corroborated his self-incriminating statements.¹⁵ The excluded evidence was critical to Gable's defense because Gable

¹⁴ The California Supreme Court held that the trial court erred in excluding the evidence, but that the error was harmless because no prejudice occurred. *Cudjo*, 698 F.3d at 759.

¹⁵ The court acknowledges that Crouse's multiple confessions were not without contradictions and that, as did the third-party in *Chambers*, Crouse eventually recanted his confessions. Moreover, some of the specific details of Crouse's confession appear to contradict some witness testimony, physical evidence, and even Crouse's own claims. However, such inaccuracies or inconsistencies do not negate the validity of the trustworthiness analysis here. *See, e.g., Cudjo*, 698 F.3d at 763 (alleged confession included details of the killing that were directly at odds with known facts that victim had been hogtied before being beaten to death).

sought to undermine the state’s single-person approach by offering reliable evidence of an identifiable other person who murdered Francke. Here, much as the court in *Lunbery* concluded, “[t]he murder called out for a murderer. The trial as conducted . . . left only [the defendant] in view as the murderer.” *Lunbery*, 605 F.3d at 762. In *Lunbery*, the court noted that “[a]n accused does not have an ‘unfettered right’ to present any evidence he or she wishes.” *Id.* at 762 (quoting *Taylor v. Illinois*, 484 U.S. 400, 410 (1988)). “However, as *Chambers* teaches, depending on the facts and circumstances of the case, at times a state’s rules of evidence cannot be mechanistically applied and must yield in favor of due process and the right to a fair trial.” *Id.* (citing *Chambers*, 410 U.S. at 302).

Here, the trial court’s mechanistic application of the Oregon Rules of Evidence denied Gable his federal constitutional right to present a defense. Having determined such, the court must determine whether the constitutional error was harmless. *Cudjo*, 698 F.3d at 768; *but see Chambers*, 410 U.S. at 302-303 (question whether the evidence at issue was “critical” also answered the question whether the defendant was prejudiced).

In federal habeas corpus proceedings, a harmless error analysis “requires federal courts to determine ‘whether the error had substantial and injurious effect or influence in determining the jury’s verdict.’” *Cudjo*, 698 F.3d at 768 (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993)). “Under this analysis, when ‘the record is so evenly balanced that a conscientious judge is in grave doubt as to the harmlessness of an error . . . the petitioner must win.” *Id.* (quoting *O’Neal v. McAninch*, 513 U.S. 432, 437 (1995)). Here, Gable has demonstrated that the exclusion of Crouse’s statements had a substantial and injurious effect or influence in determining the jury’s verdict: evidence of Crouse’s confession “would have filled a major gap in the defense case, and would have

greatly increased the likelihood of the jury’s entertaining a reasonable doubt of [Gable’s] guilt.”
Cudjo, 698 F.3d at 769 (citation omitted).

Accordingly, Gable is entitled to habeas corpus relief on his claim that the trial court erred in excluding evidence of third-party guilt, and on his claim that trial counsel was ineffective in failing to present appropriate legal support, including citation to federal law, in support of the admission of evidence of third party guilt.

III. Excuse of Procedural Default Under *Martinez*

In the alternative to his argument that actual innocence excuses his procedural default in general, Gable also argues in particular that the procedural default of his ineffective assistance of trial counsel claim for failure to assert Gable’s rights under *Chambers* is excused pursuant to *Martinez v. Ryan*, 556 U.S. 1 (2012).

A. Legal Standards

In *Martinez*, the Supreme Court held that the absence or ineffective assistance of counsel at an initial-review collateral proceeding may establish cause to excuse a petitioner’s procedural default of substantial claims of ineffective assistance of trial counsel. *Martinez*, 556 U.S. at 14; *Rodney v. Filson*, 916 F.3d 1254, 1259 (9th Cir. 2019). To excuse a procedural default under *Martinez*, a petitioner must establish: “(1) that his ineffective-assistance-of-trial-counsel claim is ‘substantial’; (2) that he had no counsel during his state collateral review proceeding or that his counsel during that proceeding was ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668 (1984); (3) that ‘the state collateral review proceeding was the “initial” review proceeding in respect to the “ineffective-assistance-of-trial-counsel-claim”’; and (4) that state law requires ineffective-assistance-

of-trial-counsel claims to be raised in initial-review collateral proceedings.” *Filson*, 916 F.3d at 1259 (quoting *Trevino v. Thaler*, 569 U.S. 413, 423 (2013)) (additional citations omitted).

To show that his claims are “substantial” under *Martinez*, a petitioner must demonstrate that they have “some merit.” *Martinez*, 566 U.S. at 14. The Court in *Martinez* defined “substantiality” by referring to the established standard for issuing a certificate of appealability: “a petitioner must show that reasonable jurists could debate whether (or for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). “Thus, to determine whether a claim is substantial, *Martinez* requires the district court to *review* but not *determine* whether trial or appellate counsel’s acts or omissions resulted in deficient performance and in a reasonable probability of prejudice, and to *determine* only whether resolution of the merits of the IAC claim would be debatable among jurists of reason and whether the issues are deserving enough to encourage further pursuit of them.” *Northrup v. Blades*, Case No. 1:14-cv-00371-CWD, 2015 WL 5273261, at *7 (D. Idaho Sept. 9, 2015) (emphasis in original).

The *Strickland* standard requires a showing of both deficient performance and prejudice. *Strickland*, 466 U.S. at 687. To establish deficient performance, a petitioner “must show that counsel’s representation fell below an objective standard of reasonableness . . . under prevailing professional norms.” *Id.* at 688. To establish prejudice, a petitioner must “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

“[A] district court may take evidence to the extent necessary to determine whether the petitioner’s claim of ineffective assistance of trial counsel is substantial under *Martinez*.” *Dickens*, 740 F.3d at 1321. As described by the Ninth Circuit in *Filson*, “[b]ecause *Martinez* requires a showing that post-conviction counsel was ineffective under the standards of *Strickland*, a petitioner who was represented by post-conviction counsel in his initial-review collateral proceeding must show not only that his procedurally defaulted trial-level IAC claim is substantial but also that there is ‘a reasonable probability that the trial-level IAC claim would have succeeded had it been raised’ by post conviction counsel.” *Filson*, 916 F.3d at 1260 (citing *Runnigeagle v. Ryan*, 825 F.3d 970, 982 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 1439 (2017)). Moreover, “[t]o demonstrate that there was a reasonable probability that, absent the deficient performance, the result of the post-conviction proceedings would have been different, it will generally be necessary to look through to what happened at the trial stage.” *Clabourne v. Ryan*, 745 F.3d 362, 377-78 (9th Cir. 2014), *overruled on other grds by McKinney v. Ryan*, 813 F.3d 798 (9th Cir. 2015); *see also Detrich v. Ryan*, 740 F.3d 1237, 1246 (9th Cir. 2013) (plurality opinion noted that *Martinez* recognized that “determining whether there has been ineffective assistance of counsel often requires factual development in a collateral proceeding”).

B. Analysis

Here, the parties do not dispute that in Oregon, post-conviction review is the initial review proceeding for any claim of ineffective assistance of counsel, that in the state PCR proceeding Gable did not assert a claim of ineffective assistance of trial counsel based on the failure to assert his rights

under *Chambers*, or that, as a result, such a claim is procedurally defaulted.¹⁶ See *Wiese v. Nooth*, ___ Fed. Appx. ___, 2019 WL 643861, at *1 (9th Cir. 2019) (noting Oregon law requiring presentment of ineffective assistance of trial counsel claims in state PCR proceedings). The only issues disputed, then, are whether the ineffective assistance of trial counsel claim arising out of the failure to assert Gable’s rights under *Chambers* was substantial, and whether Gable’s state PCR trial counsel was ineffective for failing to raise the claim.

Under the circumstances described above, the failure to assert Gable’s rights under *Chambers* was certainly substantial. Resolution of the merits of Gable’s ineffective assistance of trial counsel claim based on trial counsel’s failure to advance Gable’s rights under *Chambers* would be, at the least, debatable among jurists of reason. The issue is deserving enough to encourage further pursuit thereof. *Miller-El*, 537 U.S. at 336.

Because Gable had counsel in his state PCR proceeding, upon establishing that his ineffective assistance of trial counsel claim is “substantial,” Gable also must show “that there is ‘a reasonable probability that the trial-level IAC claim would have succeeded had it been raised’ by post-conviction counsel.” *Filson*, 916 F.3d at 1260 (citing *Runnigeagle*, 825 F.3d at 982). Upon a “look through to what happened at the trial stage,” this court concludes that Gable has demonstrated a reasonable probability exists that, absent the deficient performance of his PCR trial counsel, the result of the post-conviction proceedings would have been different. *Clabourne*, 745 F.3d at 377-78.

¹⁶ The court notes that Gable did assert a claim of ineffective assistance of trial counsel in his state PCR proceedings because trial counsel “failed to develop, investigate and produce at trial evidence that . . . John Crouse was the killer of Michael Francke.” Resp. Exh. 155, p. 3. Gable did not, however, allege or argue a claim that trial counsel failed to appropriately object to the trial court’s exclusion of evidence of Crouse’s confessions.

Accordingly, Gable has established both cause and prejudice under *Martinez* to excuse the procedural default of claim that trial counsel was ineffective in failing to present appropriate legal support, including citation to federal law, in support of the admission of evidence of third party guilt. Because Gable has met the *Martinez* standard, he is entitled to relief on the merits of this claim, notwithstanding his procedural default.

IV. Ineffective Assistance of Counsel – *Ex Post Facto*

Petitioner also alleges a violation of his right to effective assistance of trial counsel based upon counsel’s failure to “object on *ex post facto* grounds to the trial court submitting to the jury in the penalty phase of the trial the possibility of Mr. Gable being sentenced to life without the possibility of parole.” Am. Pet., p. 12 (ECF No. 61). As noted, petitioner exhausted this claim in his state PCR proceeding.

A. Legal Standards

An application for writ of habeas corpus shall not be granted unless adjudication of the claim in state court resulted in a decision that was: (1) “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or (2) “based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding.” 28 U.S.C. § 2254(d). A state court’s findings of fact are presumed correct and a habeas petitioner bears the burden of rebutting the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). *See also Sophanthavong v. Palmateer*, 378 F.3d 859, 867 (9th Cir. 2004) (“Under Section 2254(e)(1), [petitioner] has the burden of rebutting the presumption that a state court’s determination of the factual issues is correct by clear and convincing evidence.”).

A state court decision is “contrary to . . . clearly established precedent if the state court applies a rule that contradicts the governing law set forth in [the Supreme Court’s] cases” or “if the state court confronts a set of facts that are materially distinguishable from a decision of [the Supreme] Court and nevertheless arrives at a result different from [that] precedent.” *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000). Under the “unreasonable application” clause, a federal habeas court may grant relief only “if the state court identifies the correct legal principle from [the Supreme Court’s] decisions, but unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* at 413. The “unreasonable application” clause requires the state court decision to be more than incorrect or erroneous. *Id.* at 410. The state court’s application of clearly established law must be objectively unreasonable. *Id.* at 409.

The clearly established United States Supreme Court law governing ineffective assistance of counsel claims is set forth in *Strickland*. See *Baylor v. Estelle*, 94 F.3d 1321, 1323 (9th Cir. 1996) (stating that *Strickland* “has long been clearly established federal law determined by the Supreme Court of the United States”). A habeas petitioner must show that counsel’s performance was deficient, which “requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687. A petitioner must also show counsel’s deficient performance prejudiced his defense, which requires showing that “counsel’s errors were so serious as to deprive [Petitioner] of a fair trial, a trial whose result is reliable.” *Id.* To show prejudice, a petitioner must demonstrate a reasonable probability that the result of the proceeding would have been different absent the error. *Id.* at 694. A reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *Id.*

In making the prejudice determination, the court “must consider the totality of the evidence before the judge or jury.” *Id.* at 695.

“Surmounting *Strickland*’s high bar is never an easy task.” *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). “The standards created by *Strickland* and section 2254(d) are both highly deferential and when the two apply in tandem, review is ‘doubly’ so.” *Harrington v. Richter*, 562 U.S. 86, 105 (2011) (citations omitted). These standards are “difficult to meet” and “demands that state court decisions be given the benefit of the doubt.” *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). “Representation is constitutionally ineffective only if it ‘so undermined the proper functioning of the adversarial process’ that the defendant was denied a fair trial.” *Richter*, 562 U.S. at 110 (quoting *Strickland*, 466 U.S. at 686).

B. Background

At the time of the offense on January 17, 1989, Oregon law provided two sentencing options for aggravated murder: death or life with the possibility of parole (known as “ordinary life”). *Gable*, 353 Or. at 752. “Specifically, under the law in effect at the time of the offense, a jury could make findings requiring a defendant to be put to death; if it did not, the trial court was required to impose a sentence of life imprisonment with the possibility of parole after a minimum of 30 years of imprisonment.” *Id.* (citing OR. REV. STAT. § 163.105(1)(e) (1987)).

Later that year, however, the Oregon legislature amended the law “to provide a third, middle option of life *without* the possibility of parole, known as ‘true life.’” *Id.* (citing OR. REV. STAT. § 163.105(a) (1989)) (emphasis in original). The new law provided that “true life is the presumptive sentence if the jury does not return findings requiring the death penalty and allows the imposition

of a sentence of ordinary life only when 10 members of the jury agree that there are sufficient mitigating circumstances.” *Id.* (citing OR. REV. STAT. § 163.150(2)(a); additional citation omitted).

In the penalty phase of Gable’s case, the trial judge, at the request of defense counsel, instructed the jury on the basis of the new sentencing law in existence at the time of the trial. *Id.* at 753. “[T]hat is to say, the trial court instructed the jury that it had three sentencing options: death, true life, or ordinary life.” *Id.* The jury determined that Gable should not be sentenced to death, but also should not be eligible for parole. *Id.* Accordingly, the trial court sentenced Gable to a term of life imprisonment without the possibility of parole. *Id.*

In his state PCR proceeding, Gable alleged trial counsel performed ineffectively in failing to “[o]bject on the grounds of Ex Post Facto the Court’s submitting to the jury in the penalty phase of the trial the possibility of the petitioner being sentenced to life without the possibility of parole.” Resp. Exh. 155, p. 2. The PCR trial court rejected this claim, finding that Gable had waived his *ex post facto* constitutional rights concerning the true life sentencing option. *Gable*, 203 Or. App. at 723-24.

The Oregon Court of Appeals reversed, concluding that the PCR trial court erred in finding Gable had waived any objection, based on *ex post facto* protections, to the submission of the true life sentencing option to the jury. The court of appeals reached this result because “[i]n particular, there [was] no evidence that criminal defense counsel actually conferred with petitioner regarding that matter, much less that petitioner agreed to waive the *ex post facto* objection.” *Id.* at 726. The Oregon Court of Appeals found, however, that this conclusion did not compel the allowance of post-conviction relief. Instead, it remanded the case back to the PCR trial court, because “the post-conviction court never determined whether petitioner was prejudiced by his attorney’s default.” *Id.*

The court of appeals framed the question on remand as follows: “Specifically, if counsel had engaged in a constitutionally adequate discussion with petitioner, would petitioner then have elected to waive his objection to the submission of the “true life” option to the jury?” *Id.*

On remand, the PCR trial court stated this question and summarized Gable’s testimony on the issue from the original PCR proceeding:

THE COURT: I would be interested though, I guess, in the bottom line. And that is if we can get to that, I wonder if his position has changed. And, of course, in reviewing the case law, generally those defendants who have faced the death penalty have been prone to view that three options being presented to the jury as better than the two, and I wonder if his position is the same. Because the reason we’re here is is [sic] because his testimony at the trial level when we had the [first PCR] trial in 2000 basically ran something like this.

“If I had my choice, I would have said to the court, to the attorneys, that I want either death or life with the possibility of parole, and not this middle option of true life.” And I am wondering whether his position remains the same today. If it’s like as has happened in the past – particularly in one case – where this very issue was the same – went back, and then the defendant changed his mind and said, “Well, I really do want true life after all.” And then that went up on appeal, and then they determined well, he really does have the right to – even though he argued something differently at the appellate level and won on that – prevailed – he still has the right to change his mind later and then say, “Well, I really do want that option.”

You said “I’m not guilty; therefore, I want death or life with the possibility of getting out – parole in essence.” Is that still – well, I’ll leave it to you Mr. Hadley. I am interested in whether his position changed though.

PCR Tr., Nov. 27, 2006, Vol. I, p. 15-16. The PCR court then permitted Gable to supplement the record with additional testimony on this issue, and the court, counsel, and Gable engaged in the following colloquy:

COUNSEL: Do you understand what the Judge was just about to ask you?

GABLE: Yes.

* * *

COUNSEL: Are you still wanting to go forward today and ask that your sentence be modified and that you either be given life with parole – even if you’re risking a chance of facing the death penalty down the line?

GABLE: Yes.

COUNSEL: You clearly understand?

GABLE: Yes.

THE COURT: You realize the jury found against you – the original jury that heard this case in the penalty phase – found against you on three of the four questions that were presented. And you were pretty close. There was even a split verdict with regard to whether you should have, in fact, received the death penalty. At least two jurors felt that you should.

I wonder if it is – is there any reason why you would take that sort of risk – realizing that that was the result the last time around?

GABLE: Well, Your Honor, I’ve claimed innocence since this started – the nightmare. And I figure I’d rather just – if the State chooses to give me the death penalty, I’d rather have that instead of life without parole for a crime I didn’t commit.

Id. at pp. 16-17.

The PCR trial court issued a detailed Judgment on Remand which incorporated the findings from the prior PCR proceeding and set forth additional findings and conclusions. Resp. Exh. 371. The court found Gable did not meet the burden of establishing prejudice. The PCR trial court noted that Gable testified at the earlier trial, as well as in an earlier deposition, and re-affirmed on remand that if counsel had informed Gable of the *ex post facto* issue, Gable would not have waived the right to exclude the true life option and would have opted to force the jury to choose between a sentence of death or life with the possibility of parole. Resp. Exh. 371, pp. 2-3. However, the trial court found Gable “was *not* a credible witness during trial of this matter and is *not* a credible witness with respect to this issue.” Resp. Exh. 371, p. 4 (emphasis in original).

The PCR trial court explained Gable's failure to meet the burden of establishing prejudice as follows:

Petitioner's stated reason for not giving the jury the "true-life" option is because Petitioner feels that since he is innocent, if the jury only had the options of death or life with parole, everyone (including the jury, the trial court, the trial counsel, and the appellate courts) would have paid closer attention to his case and would therefore somehow reach the conclusion that he is innocent. Petitioner concludes that a potential death penalty would have resulted in greater scrutiny, and yet, the death penalty was always a possibility in the case. In addition, that option obviously could not have been reached, in any event, unless the jury first concluded that Petitioner was guilty of the murder of Michael Francke. Petitioner's hypothetical reason for wanting to reject the "true-life" option doesn't make much sense under rationale [sic] analysis.

Upon conviction of the petitioner, petitioner's trial counsel purposely elected a strategy which would give the jury a viable choice of "true-life" rather than limit the choice to only the death penalty or life with the possibility of parole. Petitioner's trial counsel were concerned that the jury would vote to impose the death penalty if the jury only had the choices of death or life with the possibility of parole.

Resp. Exh. 371, p. 3.

In finding Gable not a credible witness on this issue, the trial court noted that Gable's "position on the 'true-life' issue appears to simply be one more example of a false bravado which is a part of the character of the Petitioner and which led Petitioner to create a part of the evidence which led to his original conviction in the first instance." Resp. Exh. 371, p. 4. The court declined to speculate that some amount of prejudice resulted from the true-life option being sent to the jury, and without resorting to that speculation, found "no evidence (Petitioner's testimony is *not* credible) of prejudice resulting from the 'true-life' option being presented to the jury. . . . There is no evidence other than the Petitioner's testimony, and the testimony is simply not credible." Resp. Exh. 371, p. 4 (emphasis in original).

Although, the Oregon Court of Appeals affirmed the PCR trial court's decision on remand without opinion, the Oregon Supreme Court granted Gable's petition for review and upheld the PCR trial court's decision denying relief in a published opinion. *Gable*, 353 Or. 750. Gable argued to the Oregon Supreme Court that his sentence violated the *Ex Post Facto* Clause and that, but for the lack of proper advice from counsel, he would have received a lawful sentence. *Id.* at 762. The Oregon Supreme Court rejected this argument:

Petitioner's argument that he was obviously prejudiced because of the unlawful sentence that resulted amounts to question-begging; it assumes the very issue in contention, namely, whether the receipt of correct advice would have made a difference to petitioner – that is to say, whether he would have waived his *ex post facto* objection anyway.

That question cannot be assumed away. It is a critical issue in any post-conviction case when the claim of inadequate assistance turns on the propriety of trial counsel's advice; the court always must determine whether the receipt of correct advice would have made a difference.

Id. The Oregon Supreme Court concluded that Gable did not establish that the receipt of advice from trial counsel about a possible *ex post facto* objection would have made a difference in this case:

The only evidence on that point is petitioner's assertion that he would have insisted on exercising his *ex post facto* rights and have the jury instructed on only two sentencing options. As we have noted, the post-conviction court did not believe petitioner. There is no suggestion that the post-conviction court lacked a basis in the record for making that finding as to petitioner's credibility. To the contrary, throughout the course of the post-conviction proceeding, the court detailed inconsistencies in petitioner's testimony that led it to conclude – repeatedly – that petitioner simply was not credible.

Id. at 763-64.

C. Analysis

The Oregon Supreme Court's decision that Gable did not establish the outcome of the proceeding would have been different had counsel advised Gable of his *ex post facto* rights was not

objectively unreasonable. Based on the PCR trial court's determination that Gable's testimony on the point lacked credibility, the Oregon Supreme Court reasonably concluded that, if trial counsel had advised Gable of his *ex post facto* rights, trial counsel would not have requested the jury instruction including only the "true life" option at sentencing.

Gable contends that the Oregon Supreme Court applied the incorrect prejudice test in assessing his claim that trial counsel was ineffective in failing to object to the true life sentence option on *ex post facto* grounds. Gable notes he had a fundamental right to not be sentenced under an *ex post facto* law, and argues he has established prejudice because trial counsel failed to challenge the imposition of a sentence in violation of his *ex post facto* rights. For support, Gable cites Justice Walters's dissenting opinion in the case, in which she makes the same argument and provides legal analysis that bolsters his position. Gable further cites several federal courts of appeal cases holding that imposing on a criminal defendant a sentence that the law did not authorize at the time of the crime is plain error. These decisions found such an incorrect sentence prejudicial under *Strickland* if it was caused by counsel's failure to object to the unlawful sentence, and ordered remand for re-sentencing under the law in effect at the time of the crime. This argument, however, ignores *Strickland's* requirement that, in making the prejudice determination, the court must consider the totality of the evidence before the judge or jury to determine whether there is a reasonable probability that the outcome of the proceeding would have been different.

As the Oregon Supreme Court correctly noted, Gable's argument that he obviously suffered prejudice because he received an unlawful sentence, amounts to "question-begging." *Gable*, 353 Or. at 762. It does not apply *Strickland's* totality of the evidence criterion. Under the circumstances of Gable's case, many reasons exist why a defendant might have wanted to waive *ex post facto* rights.

“As petitioner’s own criminal counsel explained, presenting the jury with three sentencing options instead of two could be viewed as advantageous by a criminal defendant facing the death penalty.” *Id.* at 764. Indeed, in *State v. McDonnell*, 329 Or. 375, 987 P.2d 486 (1999), the Oregon Supreme Court held that the trial court erred in refusing to accept a capital defendant’s waiver of an *ex post facto* objection and instruct the jury on the “true life” sentencing option. *See also State v. Rogers*, 330 Or. 282, 4 P.3d 1261 (2000) (same).

The Oregon Court of Appeals aptly described Gable’s circumstances in its decision remanding the PCR case for a determination whether Gable could establish prejudice, *i.e.*, the probability that the outcome would have been different:

Here, in the most literal sense, availability of the “true life” sentence had more than a “tendency” to affect the ultimate outcome of the prosecution – that *is* the sentence that petitioner actually received. However, the appropriate inquiry regarding actionable prejudice is considerably more sophisticated than such sophism. If petitioner would, in fact, have waived his *ex post facto* right in these circumstances (as have many similarly situated criminal defendants. . .), then petitioner was not prejudiced by his counsel’s default. *That is, petitioner might have waived those protections in all events because it was to his practical, tactical benefit to do so.*

Gable, 203 Or. App. at 735 (emphasis added) (internal citation omitted). As the PCR trial court found, Gable’s testimony that he would not have waived his *ex post facto* protections was not credible. Resp. Exh. 371, p. 4. Moreover, the Oregon Supreme Court “found no suggestion that the PCR trial court lacked a basis in the record for making that finding” as to Gable’s credibility. *Gable*, 353 Or. at 763.

This court must defer to the state court’s credibility finding. *Sophanthavong*, 378 F.3d at 867-68 (“because the state court conducted an evidentiary hearing in which Mr. Sophanthavong testified, we are required to defer to the state court’s credibility findings”), citing *inter alia Marshall*

v. Lonberger, 459 U.S. 422, 434 (1983) (holding that “Title 28 U.S.C. § 2254(d) gives federal habeas corpus courts no license to redetermine credibility of witnesses whose demeanor has been observed by the state court, but not by them.”). Accordingly, the Oregon Supreme Court’s decision that Gable failed to establish prejudice was objectively reasonable, and this court must defer to that decision under § 2254(d). Gable is not entitled to habeas corpus relief on his claim that trial counsel was ineffective in failing to object on *ex post facto* grounds to the trial court submitting to the jury in the penalty phase of the trial the option of Gable being sentenced to life without the possibility of parole.

V. Freestanding Actual Innocence

Gable also alleges a freestanding claim that he is “actually innocent.” The United States Supreme Court has yet to hold that a freestanding claim of actual innocence is cognizable as an Eighth or Fourteenth Amendment claim subject to federal habeas corpus review. *McQuiggen v. Perkins*, 569 U.S. 383, 133 S. Ct. 1924, 1931 (2013); *House*, 547 U.S. at 554-55. On several occasions, however, the Supreme Court has assumed, without deciding, that such a claim may exist in capital cases. *House*, 547 U.S. at 554-55; *Herrera*, 506 U.S. at 417-19.

The Ninth Circuit has extended the “assumption” of the existence of a freestanding actual innocence claim to non-capital cases, but has consistently found that the petitioner failed to satisfy the extraordinarily high threshold necessary to support such a claim. *See, e.g., Henry v. Marshall*, 224 Fed. Appx. 635, 637 (9th Cir. 2007); *Renteria v. Curry*, 506 Fed. Appx. 644, 646 (9th Cir. 2013); *Hageman v. Hill*, 314 Fed. Appx. 996, 998 (9th Cir. 2009). In doing so, the Ninth Circuit has opined that Justice Blackman articulated the applicable threshold showing for such a claim in his *Herrera* dissent, that a petitioner must “go beyond demonstrating doubt about his guilt, and must affirmatively prove that he is probably innocent.” *Carriger*, 132 F.3d at 476; *Boyde v Brown*, 404

F.3d 1159, 1168 (9th Cir. 2005); *see also House*, 547 U.S. at 555 (sequence of the Court’s decisions in *Herrera* and *Schlup* “implies at the least that *Herrera* requires more convincing proof of innocence than *Schlup*”). A petitioner’s burden under this standard is “extraordinarily high” and requires a showing that is “truly persuasive.” *Carriger*, 132 F.3d at 476 (quoting *Herrera*, 506 U.S. 417).

As discussed above, Gable has cast serious doubt on the state’s case that he killed Michael Francke in the course of burgling Francke’s car for “snitch papers.” But although Gable has presented sufficient evidence of a constitutional violation that *probably* resulted in the conviction of someone who is actually innocent, Gable has not made the “truly persuasive” and “extraordinarily high” showing necessary to support a finding that he is *actually* innocent. Accordingly, habeas corpus relief should not be granted on Gable’s freestanding claim of actual innocence.

VI. Remaining Claims Not Addressed in Gable’s Brief in Support

As previously noted, Gable does not address the remaining grounds for relief alleged in his Petition for Writ of Habeas Corpus. Consequently, Gable has not sustained his burden to demonstrate why he is entitled to relief on these claims. *See Lambert v. Blodgett*, 393 F.3d 943, 970 n. 16 (9th Cir. 2004). Nevertheless, the court has reviewed Gable’s remaining claims and is satisfied that Gable is not entitled to habeas corpus relief on those claims.

CONCLUSION

For these reasons, Gable’s Amended Petition for Writ of Habeas Corpus (ECF No. 61) is GRANTED IN PART and DENIED IN PART. The Amended Petition is GRANTED on the bases that the trial court erred in excluding evidence of third-party guilt and that trial counsel provided ineffective assistance in failing to assert Gable’s federal due process rights in the face of the trial

court's error. The Amended Petition is DENIED on the remaining claims for relief, including Gable's claim that trial counsel was ineffective in failing to advise Gable of his *ex post facto* rights and in failing to raise an *ex post facto* objection to the sentencing options at the penalty phase, as well as Gable's free-standing claim of actual innocence.

Gable shall be released from custody unless the State of Oregon elects to retry him within 90 days of the date of this order. A certificate of appealability is GRANTED as to all grounds for relief discussed herein on the basis that Gable has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

DATED this 18th day of April, 2019.

/s/ John V. Acosta
John V. Acosta
United States Magistrate Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

**AMENDED PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT TO 28
U.S.C. § 2254; REQUEST FOR
EVIDENTIARY HEARING.**

TABLE OF CONTENTS	Page
I. INTRODUCTION	1
II. PROCEDURAL AND JURISDICTIONAL ALLEGATIONS	1
A. Criminal Proceedings	1
1. Trial Court Proceedings	1
2. Direct Appeal	2
B. Post-Conviction Relief Proceedings	3
1. Post-Conviction Appeal I	3
2. Post-Conviction Proceedings On Remand	4
3. Post-Conviction Appeal II	5
4. Certiorari to the United States Supreme Court	5
C. Current Federal Habeas Proceedings	5
III. GROUNDS FOR RELIEF	6
IV. PRAYER FOR RELIEF	12

EXHIBIT LIST

Exhibit A	Order of the Appellate Commissioner of the Oregon Court of Appeals Granting Reconsideration, Vacating Order Of Dismissal, And Granting Motion For Leave To File Late Notice Of Appeal, dated September 15, 2008.
Exhibit B	Decision of the Oregon Court of Appeals, dated June 8, 2011.
Exhibit C	Petition for Writ of Certiorari to the United States Supreme Court in Frank Edward Gable v. State of Oregon, No. 13-6701.
Exhibit D	Order of the United States Supreme Court, dated November 18, 2013.

I. INTRODUCTION

Petitioner, Frank Gable, an incarcerated prisoner in the custody of the State of Oregon, signed a *pro se* Petition for Writ of Habeas Corpus on March 16, 2007, and that Petition was docketed by this Court on March 22, 2007. Docket No. 1. Counsel was subsequently appointed. Docket No. 4. Petitioner, through counsel, now hereby amends and supplements his *pro se* Petition. *See* Fed. R. Civ. P. 15.

II. PROCEDURAL AND JURISDICTIONAL ALLEGATIONS

A. Criminal Proceedings.

1. Trial Court Proceedings.

In April 1990, Petitioner, Frank Gable, was indicted in Marion County Circuit Court Case No. 90-C-20442 for six counts of aggravated murder and one count of intentional murder. Resp. Ex. 103. Each count alleged a different theory for the stabbing death of a single victim, Michael Francke, the Director of the Oregon Department of Corrections, outside the Dome Building in Salem, Oregon on January 17, 1989. *Id.* Attorneys Robert Abel and John Storkel were appointed to represent Mr. Gable at trial.

A jury trial took place between March and June of 1991. The jury convicted Mr. Gable of all counts on June 27, 1991. The penalty phase trial commenced on July 2, 1991. The jury rejected the death penalty. Mr. Gable was sentenced to a term of life imprisonment without the possibility of parole. Judgment was entered on July 12, 1991. Resp. Ex. 104.

2. Direct Appeal (A071159, S041282).

On August 14, 1991, Mr. Gable timely appealed, raising five assignments of error, including that the trial court erred in denying his motion to suppress statements he made to law enforcement, erred in excluding evidence that another man, Johnny Lee Crouse, had confessed to the murder, and violated the *Ex Post Facto* Clause by retroactively applying the 1989 amendments to the sentencing statute applicable to aggravated murder.¹ Resp. Ex. 106. Attorney John Daugirda represented Mr. Gable on appeal.

On April 20, 1994, the Oregon Court of Appeals issued a published decision, affirming Mr. Gable's conviction. *See State v. Gable*, 127 Or. App. 320, 873 P.2d 351 (1994). The Court of Appeals held that Mr. Gable's statements to law enforcement were not obtained in violation of his rights to remain silent and to counsel. *Id.* at 322-32. The Court addressed the *Ex Post Facto* issue, stating:

Defendant also argues for the first time on appeal that the trial court erred during the penalty phase in instructing the jury and in accepting the jury's verdict that defendant should be sentenced to life imprisonment without the possibility of parole or release on the ground that retroactive application of the 1989 amendments to ORS 163.105 and ORS 163.150 violated the *ex post facto* clauses of the state and federal constitutions. The claim of error is unpreserved and we decline to address it. *See State v. Walton*, 311 Or. 223, 241, 809 P.2d 81 (1991).

Id. at 332. Finally, the Court wrote: "Defendant's remaining assignments of error do not require discussion." *Id.*

Mr. Gable petitioned the Oregon Supreme Court for review, raising the same claims. Resp.

¹ Prior to 1989, aggravated murder was punishable by either life in prison with the possibility of parole or the death penalty. The 1989 amendment to Oregon's aggravated murder sentencing scheme added life without the possibility of parole as a potential penalty.

Ex. 113. The Oregon Supreme Court denied review. *State v. Gable*, 319 Or. 274, 877 P.2d 1202 (1994). Justice Unis would have allowed review. *Id.*

B. Post-Conviction Relief Proceedings.

Mr. Gable timely filed for post-conviction relief in Marion County Circuit Court Case No. 95C12041.² In his petition, he raised numerous claims for relief. The post-conviction court denied relief. Resp. Ex. 345. Mr. Gable was initially represented by attorney Michael Curtis, but Mr. Curtis was replaced by attorney Ken Hadley.

1. Post-Conviction Appeal I (A113425, S053467).

Mr. Gable timely appealed the denial of post-conviction relief, raising the following issues. First, trial counsel provided ineffective assistance under the Sixth and Fourteenth Amendments to the United States Constitution because counsel failed to: (A) investigate and adduce evidence that another man, Tim Natividad, committed the murder; (B) allow Gable to testify on his own behalf in violation of the Fifth and Fourteenth Amendments; and (C) object on *ex post facto* grounds to the availability of a sentence of life imprisonment without the possibility of parole. Next, the trial court denied Mr. Gable the right to be heard under the state constitution and the Due Process Clause of

² Mr. Gable filed for post-conviction relief on July 5, 1995. At that time, there was no time limit for the filing of a federal petition for writ of habeas corpus. However, the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) became effective on April 24, 1996. The AEDPA provides petitioners one year from the date on which their state conviction became final in which to file their federal habeas corpus petition, subject to certain tolling provisions. 28 U.S.C. § 2244(d). For petitioners like Mr. Gable, whose convictions became final prior to the AEDPA, the one-year limitations period commenced on the AEDPA’s effective date. *Calderon v. United States Dist. Ct. (Beeler)*, 128 F.3d 1283, 1286 (9th Cir. 1997), *overruled in part on other grounds by Calderon v. United States Dist. Ct. (Kelly)*, 163 F.3d 530, 540 (9th Cir. 1998) (en banc). At that time, however, the limitations period was tolled pursuant to 28 U.S.C. § 2244(d)(2) as a result of a properly pending state-court proceeding that did not conclude until November 18, 2013.

the Fourteenth Amendment by failing to adequately respond to two letters he wrote. Last, the post-conviction court should have awaited the results of DNA testing the court had authorized before issuing its decision denying relief.

Mr. Gable was initially represented on appeal by attorney D. Olcott Thompson. Subsequently, Mr. Gable was represented by attorney Daniel Q. O'Dell. After O'Dell lost his license to practice law, Mr. Gable was represented by attorney David Celuch.

In a written decision, the Oregon Court of Appeals denied relief on all issues except the claim that counsel was ineffective regarding the *ex post facto* issue. On that issue, the Court of Appeals concluded that counsel's conduct was ineffective, but remanded for further proceedings to determine whether counsel's ineffectiveness with regard to the *ex post facto* issue had prejudiced Mr. Gable.

After the Court of Appeals' decision, but before the case was remanded, Mr. Gable filed a petition for review to the Oregon Supreme Court, raising the same claims contained in the appellate brief. Resp. Ex. 357. That court denied review, and the case was remanded to the post-conviction court for further proceedings on the prejudice issue. Resp. Ex. 366.

2. Post-Conviction Proceedings On Remand.

On remand, the post-conviction trial court found that Mr. Gable had not established that he had been prejudiced by counsel's failures with regard to his *ex post facto* rights. Resp. Ex. 371. Attorney Ken Hadley represented Mr. Gable at the remand proceeding.

3. Post-Conviction Appeal II (A134838, S059686).

Mr. Gable appealed the post-conviction court's decision that he was not prejudiced by counsel's failures with regard to his *ex post facto* rights. Resp. Ex. 373.³ On appeal, Mr. Gable was represented by Harrison Latto. The Court of Appeals affirmed without opinion.⁴

The Oregon Supreme Court denied relief in a published opinion. *Gable v. State*, 353 Or. 750, 305 P.3d 85 (2013). Justice Walters dissented, and would have granted relief. Undersigned counsel joined Mr. Latto as co-counsel in the Oregon Supreme Court.

4. Certiorari to the United States Supreme Court.

Mr. Gable thereafter timely petitioned the United States Supreme Court for certiorari.⁵ Certiorari was denied on November 18, 2013.⁶ Undersigned counsel represented Mr. Gable in this proceeding.

C. Current Federal Habeas Proceedings

Mr. Gable signed his *pro se* habeas corpus petition on March 16, 2007. That Petition was docketed in this Court on March 22, 2007. Docket No. 1. On September 17, 2007, pursuant to a joint request of the parties, this Court issued a scheduling order, which, among other things, tolled

³ A final judgment on the remanded issue was entered against Mr. Gable by the post-conviction court on December 12, 2006. The notice of appeal was filed on February 20, 2007. Despite this late filing, the state courts permitted the appeal to proceed. Petitioner's Exhibit A, attached hereto.

⁴ This document appears to have been omitted from the Respondent's Exhibits. It is attached hereto as Petitioner's Exhibit B.

⁵ Petitioner's Exhibit C, attached hereto.

⁶ Petitioner's Exhibit D, attached hereto

the statute of limitations from March 22, 2007, until the filing of “petitioner’s amended petition on or before 6/9/08.” Docket No. 19. Subsequently, additional appellate proceedings (described above) took place in the Oregon courts . As a result, and at the request of the parties, this Court stayed the instant proceedings on December 10, 2007. *See* Docket Nos. 21-23. On September 28, 2010, the Court administratively closed this case pending the conclusion of the state-court proceedings. Docket No. 28. On February 11, 2014, after the state-court proceedings concluded, this Court re-opened the instant proceedings. Docket No. 31. The *pro se* Petition (Docket No. 1) was deemed dismissed and re-filed as of February 11, 2014. *Id.*

III. GROUNDS FOR RELIEF

Ground One

Mr. Gable is entitled to relief from his convictions for aggravated murder and murder pursuant to the Eighth and Fourteenth Amendments of the Constitution because he is actually innocent.

Ground Two

Mr. Gable was denied his constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution to a meaningful opportunity to present a complete defense and to defend against the State’s accusations.

Ground Three

Mr. Gable was denied due process under the Fifth and Fourteenth Amendments to the United States Constitution as a result of cumulative errors during his trial.

Ground Four

Mr. Gable's constitutional rights against the application of *ex post facto* laws, secured by Article I, Section 9, of the United States Constitution were violated when the trial court instructed the jury under the 1989 amendments to Oregon Revised Statute § 163.105 and § 163.150, and when the jury sentenced Mr. Gable to imprisonment for life without the possibility of parole under this same law, which was not in effect at the time of his crime.

Ground Five

Mr. Gable was denied his rights under the Fifth and Fourteenth Amendments to the United States Constitution when the State suppressed, failed to preserve, or failed to disclose evidence material to the defense, including but not limited to exculpatory evidence, witnesses statements, and impeachment evidence.

Ground Six

Mr. Gable was denied his rights under the Fifth and Fourteenth Amendments to the United States Constitution when the trial court did not require the prosecution to provide discovery to the defense, including, but not limited to, the following.

- (A) Grand Jury testimony of the State's witnesses and Jodie Swearingen.
- (B) The raw data and charts underlying the numerous polygraph examinations conducted by the State during the course of its investigation of the Francke murder.
- (C) Information relating to the purchase and testing of a Chicago Cutlery knife.
- (D) The autopsy of Samuel Cornejo aka Navarro.

Ground Seven

Mr. Gable was denied his constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution when the trial court excluded evidence of third party guilt.

Ground Eight

Mr. Gable was denied his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution when the trial court permitted the introduction of irrelevant evidence.

Ground Nine

Mr. Gable was denied his rights under the Fifth and Fourteenth Amendments to the United States Constitution when the State was not required to elect a theory of its case.

Ground Ten

Mr. Gable was denied his rights under the Fifth and Fourteenth Amendments to the United States Constitution when the State proffered testimony that it knew or should have known was false or failed to correct testimony it knew or should have known to be false.

Ground Eleven

Mr. Gable was denied his rights under the Fifth and Fourteenth Amendments when the State, through the prosecutor, made prejudicial remarks during closing that were not supported by the evidence.

Ground Twelve

The trial court violated Mr. Gable's constitutional rights, secured by the Fifth and Fourteenth Amendments to the United States Constitution, when it denied his motions to suppress statements he made to law enforcement after he asserted his rights to remain silent and to counsel.

Ground Thirteen

Mr. Gable was denied his rights under the Fifth and Fourteenth Amendments to the United States Constitution when the State failed to offer sufficient evidence to prove every element of each of the crimes charged.

Ground Fourteen

Mr. Gable was denied his rights under the Fifth and Fourteenth Amendments to the United States Constitution when the trial court denied his motion for judgment of acquittal.

Ground Fifteen

Mr. Gable was denied the effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution when his trial attorneys failed to:

- (A) Investigate.
- (B) Make use of the investigation that was conducted and, against the advice of the defense investigators, turned over all information obtained by the defense investigators to the State as discovery without reviewing it to determine which portions were discoverable and which should have been kept as non-discoverable work product or otherwise irrelevant, immaterial, or not discoverable.
- (C) Engage appropriate experts.
- (D) Present evidence of third party guilt.

- (E) Present appropriate legal support, including citation to federal law, in support of the admission of evidence of third party guilt.
- (F) Pursue a coherent defense strategy and employ a coherent defense theory of the case at trial.
- (G) File appropriate motions.
- (H) Object to the admission of irrelevant evidence.
- (I) Prepare for, cross-examine, and impeach the State's witnesses at trial, including failing to make effective use of impeachment witnesses and investigation available at the time of trial.
- (J) Call appropriate defense witnesses, including failing to conduct investigation necessary to make strategic decisions about which witnesses to call.
- (K) Prepare for, question, and make effective use of defense witnesses.
- (L) Perform an adequate closing argument.
- (M) To meet with and advise Mr. Gable regarding discovery, investigation, and strategy.
- (N) Adequately to represent Mr. Gable, including that trial attorney Robert Abel engaged in a pattern of excessive consumption of alcohol during preparation for the trial and during the trial.
- (O) Properly object and argue to the trial court that the indictment was invalid because the Grand Jury foreman, Thomas H. Denney, OSB No. 66034, was a career prosecutor employed by the Oregon Department of Justice and unauthorized persons were present at the Grand Jury.
- (P) Object on *ex post facto* grounds to the trial court submitting to the jury in the penalty phase of the trial the possibility of Mr. Gable being sentenced to life without the possibility of parole.

Ground Sixteen

Mr. Gable was denied the effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution when his appellate attorneys failed:

- (A) To raise as error preserved defense motions and objections, including but not limited to:

- (1) the denial or overruling of defense discovery requests, including but not limited to, the requests for Grand Jury minutes, for the raw data underlying the polygraph examinations conducted by the State, for discovery regarding the purchase and testing of the Chicago Cutlery knife, and for the Cornejo autopsy;
 - (2) challenges to the admissibility of evidence;
 - (3) the denial of the defense motion for mistrial regarding the Chicago Cutlery knife; and
 - (4) the denial of the defense motion for judgment of acquittal and failed to challenge the sufficiency of the evidence to sustain the convictions.
- (B) To raise as error the exclusion of proffered defense evidence, including but not limited to:
- (1) evidence of third party guilt; and
 - (2) evidence of police interrogation tactics.

Ground Seventeen

Mr. Gable was denied the right to testify on his own behalf in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

Ground Eighteen

Mr. Gable was denied his rights to due process and to be heard guaranteed by the Fourteenth Amendment to the United States Constitution when the trial court failed to:

- (A) Give Mr. Gable the opportunity to be heard on his letter dated April 2, 1991, in which he requested a hearing on his attorneys' failure to consult with him and to prepare for trial.
- (B) Give Mr. Gable the opportunity to be heard on his letter dated July 1, 1991, in which he asked the court for relief based on several matters including trial counsel's lack of trial preparation, trial counsel's denial of Mr. Gable's right to testify, and trial counsel's excessive use of alcohol.
- (C) Postpone the trial or grant other appropriate relief when almost all of the defense investigators presented a letter to trial counsel, that was also delivered to the court, indicating that the defense attorneys were not prepared to proceed to trial.

Ground Nineteen

The trial court lacked jurisdiction because the indictment was invalid for the following reasons:

- (A) The Grand Jury foreman, Thomas H. Denney, OSB No. 66034, was a career prosecutor employed by the Oregon Department of Justice, which was involved in the investigation of the Francke homicide. Mr. Denney should have been excused from service on the Grand Jury pursuant to Or. Rev. Stat. § 10.050(2).
- (B) Oregon State Police Officer William Pierce was permitted to sit in on the Grand Jury Proceedings in violation of Or. Rev. Stat. § 132.090.

Ground Twenty

The post-conviction trial court violated Mr. Gable's constitutional right to due process of law under the Fourteenth Amendment to the United States Constitution when that court concluded that DNA testing was appropriate, but then failed to authorize sufficient funds for testing, which led to delays in the completion of necessary tests, such that the Court issued its ruling prior to the completion of testing, and then refused to re-open the judgment so that testing could be completed.

IV. PRAYER FOR RELIEF

Petitioner respectfully requests that this Court grant the writ of habeas corpus and order the matter dismissed unless the State of Oregon, through Marion County, grants him a new trial within sixty days.

RESPECTFULLY SUBMITTED this 20th day of March, 2014.

/s/ Nell Brown
Nell Brown
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I directed the Appellant's Excerpts of Record Volumes I, II, III, IV, V, VI, & VII to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman

BENJAMIN GUTMAN

Solicitor General

benjamin.gutman@doj.state.or.us

Attorneys for Respondent-Appellant
Max Williams

BG2:bmg/9776846

No. 19-35427

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK E. GABLE,

Petitioner-Appellee,

v.

MAX WILLIAMS,

Respondent-Appellant.

APPELLANT'S EXCERPTS OF RECORD VOLUME II

Appeal from the United States District Court
for the District of Oregon

FREDERICK M. BOSS
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APPELLANT'S EXCERPTS OF RECORD VOLUME II

Pursuant to Circuit Rule 30-1.7, appellant submits the following Appellant's Excerpts of Record, as indexed below.

INDEX

<u>Clerk's Docket #</u>	<u>Document</u>	<u>E.R. #</u>
103-1	Exhibit 392-393 (newspaper stories about Harden recantation)	114
103-1	Exhibit 387 (2015 Childers affidavit)	123
103-1	Exhibit 386 (2015 Vierra affidavit)	126
83-3	Exhibit H (Crouse parole report)	130
80-1	Exhibit E (Gable polygraph report)	134
80-1	Exhibit E (report of Childers interview)	145
80-2	Exhibit E (report of Harden interview)	151
80-5	Exhibit E (report of Swearingen interview)	157
80-5	Exhibit E (report of Vierra interview)	161
80-6	Exhibit E (report of Vierra interview)	176
80-6	Exhibit E (Childers polygraph report)	185
80-7	Exhibit E (Harden polygraph report)	188
80-8	Exhibit E (Swearingen polygraph report)	190
79-1	Exhibit D (newspaper stories about murder)	195
77-1	Exhibit B (affidavit of David Raskin, Ph.D)	200
76-1	Exhibit A (petitioner's recantation affidavits)	217
60-1	Transcript excerpt from state post-conviction proceedings	321

THE OREGONIAN • WEDNESDAY, JUNE 15, 2005

METRO/NORTHWEST

85

Witness recants story, receives \$1,000

The brothers of Michael Francke provide money to a man who had testified he saw the prison chief killed

By LES ZATZ
and NOELLE CROMBIE
THE OREGONIAN

The eyewitness who testified 14 years ago that Frank Gable murdered Oregon's prison director has recanted in a newspaper interview after getting \$1,000 from a Web site promoting Gable's innocence.

The Portland Tribune said in its Tuesday edition that Capt. "Shorty" Harden, 38, told the newspaper that he lied when he testified that he saw Gable shoot Michael Francke the night of Jan. 17, 1989. Harden said he was not at the murder scene and was pressured by police to testify Gable was the killer, according to the Tribune.

The interview was arranged by Rob Taylor, an ex-con from South-east Portland who operates the Web site www.brotherfrankgable.com.

Taylor told The Oregonian on Tuesday that he befriended Harden in the past month and gave him \$1,000 to "tell the truth." Taylor said he got the money from Francke's brothers. Kevin and Patrick Francke, who have long thought that Gable didn't kill their brother and that Harden lied at the trial.

"I offered it up to him," Taylor said. "He wants money for the truth."

The Tribune acknowledged the financial arrangements in its story and said the paper did not pay Harden.

Kevin Francke said the money was meant to ensure Harden's safety and to let him "disappear" for a while and take care of things he said he knows there is going to be some heat.

Although he wouldn't elaborate, Francke said Harden feared retaliation from "powerful people."

Francke has said that Harden lied when he implicated Gable, but now thinks Harden is telling the truth.

Question of ethics

Ally Collo, who teaches ethics to journalists at the Portland Tribune, said that payment of money to news sources is an ethical issue.

"It's hard to play in the mud and not get muddy on you," Collo said.

There's always the possibility that persons being interviewed have been misled or coerced into making statements, Collo said. "When money is involved, it muddles the situation further."

Gable was convicted of the murder in 1981 and sentenced to life in prison. Arguments in his latest appeal are scheduled for June 28 before the Oregon Court of Appeals.

Gable has maintained his innocence, claiming he was framed by witnesses, including Harden, who were winning favors from prosecutors and police.

David Celuch, the Portland attorney handling Gable's appeal, said "we're happy" about the recantation, but appellate judges won't hear about it. "I'm not allow-

ing to add evidence to the record in an appeal," Celuch said.

Implications for appeal

He said he heard of the reported recantation Monday and hopes soon to get a sworn statement from Harden. The new statement would become a factor if Gable wins a new trial or a new round of appeals before a lower court. "A new trial is what we want," Celuch said.

Controversy has swirled around the Francke murder almost from the moment his body was found outside the Dome Building in Salem headquarters of the state Corrections Department.

Prosecutors said Gable, an ex-con and heavy meth user, snatched Francke three times in the Dome Building parking lot. They said Gable was burglarizing Francke's car when the state official confronted him.

Skeptics have said it seemed unlikely that Gable would break into a state car parked in a government parking lot. Instead, they have reported to theories of a conspiracy to frame Gable as the prison agency's motive for an organized killing.

Kevin Francke has been one of the most prominent proponents of such a theory.

The Oregonian investigated the key elements of such theories for five months before reporting last month that those were a part of a conspiracy. The newspaper also reported on pins that destroyed Gable's alibi for the night of the murder.

Harden declines interview

Harden has refused to discuss

his role in the case since the 1981 trial and in recent months he has repeatedly declined interviews with The Oregonian. In May, he said he wouldn't talk because he was tired of being called a "rat" for testifying against Gable. "I don't want nothing to do with it," he said.

On Tuesday, Harden again declined an interview when contacted at his Southeast Portland home.

At the time of the murder, he was a car trader and drug dealer. Harden was questioned 10 months after the murder as investigators focused on Gable. Harden first said he knew nothing about the murder, and then said that what he knew, he heard from a 16-year-old named Todd Swearingen.

State police records showed that Harden told police he was actually at the murder scene and witnessed the murder. He made the statement after he failed a polygraph examination about the case. He testified at Gable's trial that the reason he finally admitted he saw the murder was because police "promised to give me evidence that they knew I was lying."

He told police in repeated interviews and again in his court testimony that he drove to the Dome Building the night of the murder to give Swearingen a ride. He said he saw Francke walk up to his Portia Brunelle and confront Gable. "They, what are you doing in my car?" He said Gable came out of the car and snatched Francke.

Noelle Crombie, 503-726-7555; noellecrombie@oregonian.com; Les Zatz, 503-427-0111; lezatz@oregonian.com

Hilton Vancouver is ready for first guests

The downtown hotel and convention center open today, six years after a law made the project possible

By ALLAN BREITMAN
THE OREGONIAN

VANCOUVER — When it opens today, the Hilton Vancouver Washington hotel will make a significant contribution.

With its 30-foot-high lobby ceiling, sleek maple walls and minimalist interiors, visitors will know "they're in a big city hotel," interior designer Michael Finch said.

That may surprise anyone who visited the decaying downtown area recently a few years ago. In that time, condominiums, apartment buildings, offices and a permanent inside home for the Vancouver Farmers Market — fueled by city property tax breaks and other incentives — have sprouted around Fisher Street Park. The 5-acre landscaped parcel at the center of it all.

But city leaders have wanted a downtown hotel and convention center most of all, thinking the project would anchor downtown. Six years after Gov. Gary Locke set in motion the project, the hotel and convention center, also opens today.

law to help build the project, they'll get it.

"How does it feel? How about relief? How about being in child-bearing labor for this year?" said Ginger Metcalf, executive director of Identity Clerk County, a nonprofit advocacy organization that had been one of the project's chief backers.

Subcontractors on Tuesday painted interior concrete steps, grouted a few lobby tiles and started to complete a physical-fitness room that probably will be ready next week. The convention center, with 14,000- and 7,500-square-foot ballrooms, also opens today.

About 75 guests are expected to spend the first night in the 226-room, seven-story hotel that adjoins the convention center with a total of 30,000 square feet.

"It's ready to open," said Brad Huston, Hilton vice president for a four-state area and a Vancouver resident.

The city owns the \$73.1 million building and convention center.

Locke will participate in today's grand opening at 10:30 a.m. The first guests will check in after an 11:30 a.m. ribbon-cutting. Public tours will be offered from noon to 3 p.m. today through Sunday.

Sunday, June 26 at 5 p.m.
Oregon Convention Center Portland Ballroom

Providence Child Center's Party with the Pros
Dinner Auction

Enjoy an evening with NBA and NFL pros such as Kenny Carr and Joey Harrington along with host Bill Schonely, plus terrific food and auction. Items! Proceeds benefit the medically fragile children at Providence Child Center.

Call 503-215-6978 to order tickets. Or mail form with payment by June 20 to: Providence Child Center Foundation, 830 NE 47th Avenue, Portland, OR 97213

Party with the Pros Dinner RSVP Form

Please make check payable to Providence Child Center Foundation:

☐ Individual tickets (\$50 each) _____ \$
☐ Tables of ten (\$500 each) _____ \$

Please charge my ☐ VISA ☐ MasterCard ☐ American Express

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11/5/2015

Witness recants story, receives \$1,000



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on June 15, 2005 at 10:48 AM, updated October 24, 2014 at 10:51 AM

The eyewitness who testified 14 years ago that Frank Gable murdered Oregon's prison director has recanted in a newspaper interview after getting \$1,000 from a Web site promoting Gable's innocence.

The Portland Tribune said in its Tuesday edition that Cappie "Shorty" Harden, 48, told the newspaper that he lied when he testified that he saw Gable stab Michael Francke the night of Jan. 17, 1989. Harden said he wasn't at the murder scene and was pressured by police to identify Gable as the killer, according to the Tribune.

The interview was arranged by Rob Taylor, an ex-con from Southeast Portland who operates the Web site freefrankgable.com.

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Aly Colon, who teaches ethics to journalists at the Poynter Institute in St. Petersburg, Fla., said payment of money to news sources inevitably raises questions about credibility.

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11/5/2015

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Skeptics have said it seemed unlikely that Gable would break into a state car parked in a government parking lot. Instead, they have resorted to theories of a corrupt conspiracy within the prison agency as the motive for an organized killing. Kevin Francke has been one of the most prominent proponents of such a theory.

The Oregonian investigated the key elements of such theories for five months before reporting last month that there was no proof of a conspiracy. The newspaper also reported on gaps that destroyed Gable's alibi for the night of the murder.

Harden has refused to discuss his role in the case since the 1991 trial, and in recent months he has repeatedly declined interviews with The Oregonian. In May, he said wouldn't talk because he was tired of being called a "rat" for testifying against Gable. "I don't want nothing to do with it," he said.

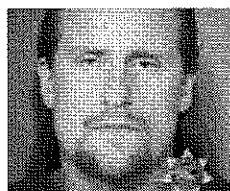
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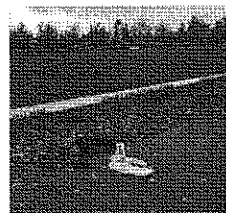
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Beaverton Good Samaritan stabbed near transit center expected to recover, police say

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11/5/2015

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Portland Tribune

TUESDAY, JUNE 14, 2005 PUBLISHED EACH TUESDAY & FRIDAY Five

'Eyewitness' recants

'Shorty' Harden says
testimony in Franche
case was result of
police coercion

By JIM REIDEN
The Tribune

Couple "Shorty" Harden, the state's only sworn eyewitness against Frank Gable in the murder of Oregon Corrections Director Michael Franche, told the

Portland Tribune on Sunday that he did not see Gable kill Franche. Gable was convicted of murdering Franche on Jan. 15, 1989, after Harden testified he saw Gable stab Franche in the chest during a heated car robbery outside the Salem corrections headquarters.



commonly called the Horse Haunting. No physical evidence tied Gable to the scene of the crime, and no one else testified to witnessing the killing. Other witnesses testified during the May 1991 trial that Gable made incriminating statements to

them about killing Franche or an unnamed corrections official. But now Harden, 46, said he was not even at the scene of the crime. During a Sunday afternoon interview, Harden said he was

See FRACHE / Page 5

Quarter, mastered



Officials bank on the state's new quarter design to bring in tourist dollars. Coin expected to trickle into circulation this week.

By DON HAMILTON
The Tribune

Oregon's new state quarter may wind up worth a lot more than 25 cents.

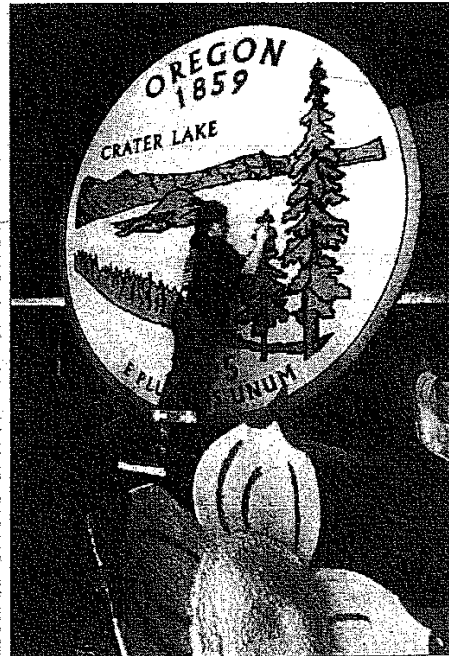
The coin, its reverse graced with a serene image of Crater Lake, will become the centerpiece of a new state tourism promotion called Explore and Win, administered by Travel Oregon, the state's tourism arm. Both the campaign and the quarter will get their official kickoff at the Oregon Historical Society on Wednesday.

Using the quarter to promote tourism involves the typical way states see the coin. Some tried putting tourism themes on their quarter, but Oregon is doing the opposite, using its quarter in the tourism campaign.

"This is the first time the actual design has been adapted for another use," said Michele Orzano, who oversees the state quarter program for Coin World magazine. "Other states might pick up this idea."

The Crater Lake quarter is the third entry in the U.S. Mint's popular 50 State Quarters program, after Minnesota and before Kansas. The coin should start finding its way into general circulation this week.

An image of the Crater Lake quarter has been posted on the state's tourism Web site, www.traveloregon.com, and tourism officials are counting on the coin itself to promote Oregon tourism all over the country, said Todd Davidson, Travel Oregon's chief executive officer.



Lynette Skene decorates a representation of the soon-to-be circulated Oregon quarter for last Saturday's Grand Floral Parade. The Crater Lake image bested a covered wagon, Mount Hood and a salmon, and it's the basis for a campaign laced with things Oregon.

See COIN / Page 6

EPA rule has city studying options

Going to court last resort to fight expensive water treatment plant

By JIM REIDEN
The Tribune

Mayor Tom Feltke is scrambling to find alternatives to a pending Environmental Protection Agency rule that could require the City Council to raise water rates to build an expensive water treatment plant.

The rule is designed to fight cryptosporidium, a potentially deadly bacteria that occurs only in very low levels in city drinking water and has never been found to make anyone ill. The rule could be adopted by this fall or winter.

Nancy Hamilton, the mayor's chief of staff, is scheduled to meet with EPA officials Thursday to discuss how the city can comply with the rule without building a new water treatment plant. But the city still was refining alternative proposals to present to the EPA on Monday morning following a contentious meeting with water watchdogs Thursday afternoon.

The choices took place during a meeting of the Portland Utilities Review Board, an official citizen panel that reviews issues that could affect water and sewer rates. At the meeting, Hamilton asked the board to support a recently developed proposal from the Water Bureau that calls for a three-year exemption from the EPA rule, during which time the bureau would conduct a study that aggressively searches for potential sources of cryptosporidium in the Bull Run Watershed, where Portland gets its drinking water.

But most members of the utilities review board rejected the proposed study as substantially unsound and subject to "false promises" that the EPA could cite in order to force the city to build the plant. The proposal also was opposed by representatives

See RULE / Page 6

Seniors beat expectations

Private school's first graduates embrace work-hard philosophy

By TODD MURPHY
The Tribune

Stu Ford is starting to wear his hair in cornrows again. Not everything is different from the kid he was four years ago.

But as he proudly walked across the stage of a North Portland church early Saturday afternoon — in the shoes of friends and family and the other members of the first-ever graduating class of De La Salle North Catholic High School — he was wearing a path entirely different from the one he seemed destined to tread a few years ago.

This fall, Ford will be going off to Lane Community College in Eugene, on a full-ride scholarship. He eventually hopes to transfer to the University of Oregon and study business.

And, among his classmates, he won't be alone. Fifty-two of the 55 members of the La Salle North's first graduating class are going off to college. Together, they've won more than \$2.2 million in college scholarships.

Based on those glowing demographics of education and safety these days, most of these kids

See GRADUATES / Page 4

Beavers head to World Series

CORVALLIS — After more than 12 hours and three games of heart-stopping, suspenseful playoff baseball, Oregon State has written its ticket to Omaha, Neb.

Andy Jenkins went 6 for 6 and Jacoby Ellsbury had three hits to lead the Beavers past Southern Cal 10-6 Monday in the third game of the NCAA super regional at Coos Stadium.

The victory sends the second-ranked Beavers (46-10) to the College World Series for the first time since 1962. OSU, ranked eighth in the 64-team bracket, will open Saturday against NC 1 and Tulane.

The Beavers outlast USC 17-4 as they

Go to www.portlandtribune.com for the complete story.

made short work of seven Trojan pitchers. Jenkins, the senior first baseman from South Salem High, had two singles, a double, a triple and a home run and drove in four runs as he led the school record for most hits in a game.

The Trojans (41-22) rallied from a 7-0 deficit with a four-run sixth inning, but the Beavers came right back with a run in the sixth and two in the seventh. Then it was on to rally-ting time for the school record.

As starter Dallas Buck came on to pitch the final 1 1/3 innings.

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SHERWIN-WILLIAMS

Portland Tribune, Tuesday, June 14, 2005

NEWS A5

Disabled requirement snags reopening of gorge landmark Putting Vista House in order

By JEANNE BEMEN
The Tribune

After a four-year, \$12 million restoration and restoration project, Vista House at Crown Point State Park, 22 miles east of Portland, is gleaming, almost ready to open for the summer tourist season.

But it looks like the landmark visitors center, built 90 years ago as a comfort station for travelers on the then-new Columbia River Highway, will open with a portable toilet in the parking lot. It's a touch of déjà vu for the building that was derelict during its original construction as a "million-dollar privy."

SUB, Oregon Parks and Recreation Department officials and the head of the Friends of Vista House say one or two temporary portable toilets are a preferable alternative to an order issued by the city of Gresham's building inspector May 31. That order limited public access only to the main level of Vista House and said that no one could use the public restrooms or visit the gift shop in the basement until a lift allowing handicapped access to the lower level was completed later this year.

If the state and Gresham agree on a temporary occupancy permit, however, both levels of the building could open by July or earlier.

ADA rules are the holding

The Gresham building inspector's office, which provides building inspection services for Multnomah County, originally said that no one could use the facilities in the basement until the lift was operational. That launched an urgent round of negotiation between attorneys for the city and the state, and although the relationship remains a bit rocky, Gresham Mayor Chris Becker said he hopes an agreement can be worked out in just a couple more days.

He said he didn't understand, however, why the state didn't address rules under the Americans With Disabilities Act a bit earlier in the process.

The restoration of the building was so complicated, state Parks Department spokesman Chris Havel said, that ADA issues weren't first on the list when the project started. And ADA requirements for a historic building — Vista House is listed on the National Register of Historic Places — can be complex.

Becker said the city wants the state to grant a "hold-harmless agreement" if a temporary occupancy permit is granted — allowing access to both levels of the building after a ramp to the front entrance is done but before the planned lift between the basement and the first floor is installed.

"We want to open up the facility, but we don't want to take responsibility for it not being in full compliance" with ADA, he said.

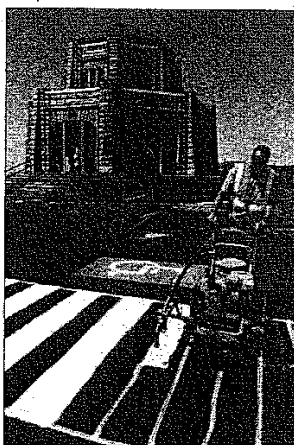
Havel said a contract to install the lift already has been signed. For the Friends of Vista House, experiencing another delay before full reopening hasn't been easy. "We're not in a stack," said Louise Yarbrough, executive director of the 22-year-old volunteer group that runs Vista House and helps with day-to-day maintenance. "We don't have control of anything; we're sort of at the mercy of the powers that be and it's a little frustrating. I can tell you."

The Friends donated \$200,000 to the restoration, which also was funded with money from the National Park Service, the Federal Highway Administration and the Oregon State Parks Trust.

Working to open up

Vista House, which gets about a million visitors a year, was supposed to reopen last year. Having the restoration work, the Friends of Vista House opened a small visitors center in a corner of the parking lot. The next goal, Yarbrough said, was reopening a gift shop in the basement, in part so the Friends can repay loans granted to bridge the funding gap while Vista House was closed.

In 1998, the last year the gift shop was open, profits totaled



Don Harbick of Apply-A-Line Inc. stripes the disabled parking area at Vista House in Crown Point State Park. Americans With Disabilities Act requirements have held up the visitor center's reopening after a four-year renovation.

\$328,000. Last year, the Friends and the American Institute of Architects successfully lobbied for a better design for the ramp. Yarbrough said the original design "shot 55 feet straight out from the front door to the edge of the parking lot. We called it the tongue de proussier." The ramp now being built follows the curve of the building.

Yarbrough said it's time for the public to get back into Vista House and see the results of the renovation. Over the years, epic force winds in the Columbia River Gorge took their toll on the building, which was plagued by

water leaks and also by attempts to weatherproof the structure.

During the restoration, a copper roof installed in 1943 — which didn't stop the leaks — was removed and replaced by the shingled green ceramic tiles specified by Vista House architect Edgar Lazzari to echo the colors in the surrounding countryside. When the building reopens, Havel predicted, all the dissent will be forgotten "and people will think this was worth it; it's the way the original designer intended, and the focus will be on what we end up with."

jeannebemen@portlandtribune.com

Francke: Harden says he was afraid

From page 1

replacing the transmission in a car when the state says Francke was killed.

Asked why he lied at the trial, Harden said the Oregon State Police threatened him if he did not testify that he saw Gable kill Francke.

"The state police, they forced me to, they threatened me. Like they — they said they'd put me in prison, put a jacket on me so I wouldn't get out, and a few other things I don't want to go into right now," said Harden, using prison slang — a jacket — for labeling someone a snitch, a charge that can lead to retaliation in jail.

Oregon State Police spokesman Lt. Gregg Hastings declined to comment on Harden's comments.

"Lupine Harden testified 14 years ago and was subject to cross examination. We have no comment beyond that," Hastings said.

Harden's criminal record includes numerous drug convictions in Oregon and Arizona between 1959 and 2000.

Gable is serving a life sentence without the possibility of parole in a Florida prison for the murder. He has maintained his innocence and appealed the verdict. Oral arguments are scheduled

before the Oregon Court of Appeals later this month.

Prosecutor makes bid

The Sunday interview was arranged by Bob Taylor, a Portland man who operates www.fredfrankgale.com, an Internet Web site devoted to proving Gable's innocence. Taylor paid Harden \$1,000 for the on-the-

record interview that he made available to the Portland Tribune. (The Tribune does not pay for interviews and did not pay Harden.) Although the Portland Tribune had a number of background discussions with Harden in the weeks leading up to this on-the-record interview, Harden limited the actual on-the-record questions to his trial testimony about Gable.

Harden declined to discuss the payment on the record. Taylor said Harden is unemployed and worried about retaliation from law enforcement officials.

"He needs it in case he has to protect himself against repercussions from the justice system," Taylor said.

The \$1,000 came from Kevin and Patrick Francke, the brothers of the slain corrections chief.

of the slain corrections chief, Taylor said, although they were not at the interview and are not involved with Taylor's Web site. The Francke brothers have long believed that Gable did not kill Michael Francke, arguing that the slaying may have been a plot by corrupt corrections officials who were concerned that Francke was about to blow the whistle on them.

As of press time, the brothers had never met or talked with Harden. Taylor became interested in the case several months ago after reading about it in the Portland Tribune. He has collected hundreds of documents related to the case, some of which he has posted on the Web site. Taylor tracked down Harden in Portland approximately one month ago after receiving a tip that Harden may have moved to town from Arizona, where he lived after the Salem trial.

Taylor's Web site also publicizes a \$1 million reward for information leading to the arrest and conviction of Francke's killer or killers. The reward is offered by MFD, a movie company that

produced the 1986 film "Without Evidence," based on the case. Portland Tribune columnist Phil Stanford co-wrote the screenplay.

The paper is continuing to investigate leads developed during the interviews.

Another player also revealed

Harden was first identified as being at the Deane Building at the time of the murder by John Swearingen, a Salem runaway and drug user. At one point, Swearingen told police that she asked Harden to pick her up at the building and that the two of them saw Gable stab Francke. Swearingen later recanted her statement and testified for the defense at the trial.

State officials dismiss allegations that Francke was killed as the result of a plot by corrupt corrections officials. Nine months after the murder, then-Gov. Neil Goldschmidt appointed former Oregon Appeals Judge John Warden to investigate the persistent rumors. The so-called Warden Commission issued a report in December 1989 that found no evidence of a conspiracy to kill Francke, although it found that some former and then-current corrections employees had been engaged in criminal activity.

jeannebemen@portlandtribune.com

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'Eyewitness' recants

'Shorty' Harden says testimony in Francke case was result of police coercion

By JIM REDDEN Issue date: Tue, Jun 14, 2005
The Tribune

Cappie "Shorty" Harden, the state's only sworn eyewitness against Frank Gable in the murder of Oregon Corrections Director Michael Francke, told the Portland Tribune on Sunday that he did not see Gable kill Francke.

Gable was convicted of murdering Francke on Jan. 17, 1989, after Harden testified he saw Gable stab Francke in the chest during a botched car robbery outside the Salem corrections headquarters, commonly called the Dome Building.

No physical evidence tied Gable to the scene of the crime, and no one else testified to witnessing the killing. Other witnesses testified during the May 1991 trial that Gable made incriminating statements to them about killing Francke or an unnamed corrections official.

But now Harden, 49, said he was not even at the Dome Building that night. During a Sunday afternoon interview, Harden said he was replacing the transmission in a car when the state says Francke was killed.

Asked why he lied at the trial, Harden said the Oregon State Police threatened him if he did not testify that he saw Gable kill Francke.

"The state police, they forced me to, they threatened me. Like they — they said they'd put me in prison, put a jacket on me so I wouldn't get out, and a few other things I don't want to go into right now," said Harden, using prison slang — jacket — for labeling someone a snitch, a charge that can lead to retaliation in jail.

Oregon State Police spokesman Lt. Gregg Hastings declined to comment on Harden's comments.

"Cappie Harden testified 14 years ago and was subject to cross examination. We have no comment beyond that," Hastings said.

Harden's criminal record includes numerous drug convictions in Oregon and Arizona between 1993 and 2000.

Gable is serving a life sentence without the possibility of parole in a Florida prison for the murder. He has maintained his innocence and appealed the verdict. Oral arguments are scheduled before the Oregon Court of Appeals later this month.

Webmaster makes link

The Sunday interview was arranged by Rob Taylor, a Portland man who operates www.freefrankgable.com, an Internet Web site devoted to proving Gable's innocence. Taylor paid Harden \$1,000 for the on-the-record interview that he made available to the Portland Tribune. (The Tribune does not pay for interviews and did not pay Harden.) Although the Portland Tribune had a number of background discussions with Harden in the weeks leading up to the on-the-record interview, Harden limited the actual on-the-record questions to his trial testimony against Gable.

Harden declined to discuss the payment on the record. Taylor said Harden is unemployed and worried about retaliation from law enforcement officials.

"He needs it in case he has to protect himself against repercussions from the justice system," Taylor said.

The \$1,000 came from Kevin and Patrick Francke, the brothers of the slain corrections chief, Taylor said, although they were not at the interview and are not involved with Taylor's Web site. The Francke brothers have long believed that Gable did not kill Michael Francke, arguing that the slaying may have been a plot by corrupt corrections officials who were concerned that Francke was about to

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blow the whistle on them. As of press time, the brothers had never met or talked with Harden.

Taylor became interested in the case several months ago after reading about it in the Portland Tribune. He has collected hundreds of documents related to the case, some of which he has posted on the Web site. Taylor tracked down Harden in Portland approximately one month ago after receiving a tip that Harden may have moved to town from Arizona, where he lived after the Salem trial.

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The paper is continuing to investigate leads developed during the interviews.

Another player also recanted

Harden was first identified as being at the Dome Building at the time of the murder by Jodie Swearingen, a Salem runaway and drug user. At one point, Swearingen told police that she asked Harden to pick her up at the building and that the two of them saw Gable stab Francke. Swearingen later recanted her statement and testified for the defense at the trial.

State officials dismiss allegations that Francke was killed as the result of a plot by corrupt corrections officials. Nine months after the murder, then-Gov. Neil Goldschmidt appointed former Oregon Appeals Judge John Warden to investigate the persistent rumors. The so-called Warden Commission issued a report in December 1989 that found no evidence of a conspiracy to kill Francke, although it found that some former and then-current corrections employees had been engaged in criminal activity.

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Rafael.Caso@doj.state.or.us

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRANK E. GABLE,

Petitioner,

v.

MAX WILLIAMS,

Respondent.

Case No. 3:07-cv-00413-AC

AFFIDAVIT OF EARL CHILDERS

STATE OF OREGON)
) ss.
County of Marion)

I, Earl Childers, being first duly sworn, depose and say:

1. I testified at Frank Gable's trial for the murder of Michael Francke.
2. The testimony I gave under oath at Mr. Gable's trial was truthful and I stand by the testimony I gave under oath.

3. Sometime prior to December 2011, I suffered a seizure and was transported to a hospital in Eugene, Oregon. As a result of the seizure, I suffered memory loss and was unable to recall past events. My memory has returned over the past three or four years. I am able to remember better now, but I don't always remember details clearly. However, I often am able to remember when something jogs my memory.

4. I reviewed my affidavit dated December 8, 2011. I recall that, sometime after I had my seizure, two females visited me at my home in Eugene where I formerly resided. One of the women asked me if I remembered statements I had given to the Oregon State Police. I answered no. After one of the women asked me questions, she wrote the affidavit in her own hand, read it back to me, and asked me to sign it. She told me "everyone else was doing it." I did not have the chance to review my testimony before signing the affidavit. I do not believe the December 2011 affidavit accurately reflects my statements, recollections, or observations.

5. I clearly recall walking down "D" Street when I saw Frank Gable driving his car on the night of the murder of Michael Francke. Mr. Gable had a sports car with "black fins" which was recognizable to me. I remember carrying Dilaudid and trying to get Mr. Gable's attention so that I could trade it for methamphetamine, which is something I had done with Mr. Gable on many occasions.

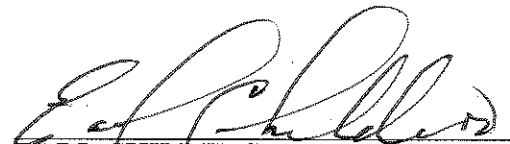
6. Sometime later, Mr. Gable told me not to tell anyone that I had seen him on "D" Street on the evening of the murder. Mr. Gable said to me "forget you ever saw me." I believe that Mr. Gable meant for me to deny having seen him on "D" Street on the night of the murder.

7. The December 2011 affidavit includes the statement that "Gable never told me that he killed Michael Francke." I no longer recall the precise details of my conversations with Mr. Gable. I don't recall Mr. Gable explicitly saying, "I killed Michael Francke." However, I do recall that Mr. Gable insinuated that he killed Michael Francke, and I remember that he would smile cryptically when we talked about the Michael Francke murder. I also remember that Mr. Gable told me why he killed Michael Francke. When I asked him why he killed Michael


Francke, he said it was because he got caught breaking into Mr. Francke's car. I remember being amazed when Mr. Gable told me of his involvement. I recall that Mr. Gable made some of these statements when I was on escape status and was staying at Mark Gesner's home.¹ I recall a night when I was walking with Gesner, Rachel Shaver, and Mr. Gable. Mr. Gable told me on that night the reason that he killed Michael Francke.

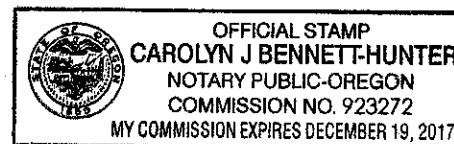
8. I have now had the opportunity to review my testimony. I do not believe that there is any conflict between what I remember today and the testimony I gave at Frank Gable's trial. However, my memory was fresher when I testified, and I remember that I testified truthfully. I stand by the testimony that I gave under oath at Frank Gable's trial.

9. I was pressed by police during interviews, but no more so than during any other interview I had ever been subjected to. The officers wanted me to talk about what I knew. I did not alter or omit any facts during interview because of police pressure, and the information I ultimately provided to police was truthful.


EARL CHILDERS

SUBSCRIBED AND SWORN to before me this 14 day of July, 2015.


Notary Public for Oregon
My Commission Expires: 12-19-2017



¹ I have not seen or communicated with Mark Gesner since the trial.

FREDERICK M. BOSS
Deputy Attorney General
NICK M. KALLSTROM #050023
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IN THE UNITED STATES DISTRICT COURT
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FRANK E. GABLE,

Petitioner,

v.

MAX WILLIAMS,

Respondent.

Case No. 3:07-cv-00413-AC

AFFIDAVIT OF JANYNE VIERRA

STATE OF OREGON)
) ss.
County of Jackson)

I, Janyne Vierra, being first duly sworn, depose and say:

1. In January 1989, I was married to Frank Gable and we lived together in an apartment on Hawthorne Avenue.

2. At that time, our apartment was in a constant state of turmoil with drug users visiting at all hours of the night. I think we had drug-using visitors or parties from five to seven

times per week. Mr. Gable was at the apartment during some of these parties. At other times, he was not present or would leave. He spent very little time at our apartment in January 1989.

There was one memorable incident that I referred to in an affidavit I signed for Mr. Gable's attorney at the Federal Public Defender's Office in which one of our neighbors got into a dispute with one of our visitors. I do not remember when that dispute occurred, nor do I know whether Frank Gable was present when that incident occurred.

3. We were eventually evicted from our apartment on Hawthorne Street. That eviction was the culmination of many disturbances that occurred in that apartment. At this time, I cannot remember whether Mr. Gable was at our apartment for any length of time the night before I was served with that eviction notice.

4. In the affidavit that I provided to Mr. Gable's attorney at the Federal Public Defender's Office, I stated that if John Kevin Walker stated that he made calls to my apartment at certain times on January 17, 1989, I could not dispute that statement. If Mr. Walker called my house on January 17, 1989, I have no memory as to who spoke with him. I would occasionally talk with Mr. Walker when he would call our residence in an attempt to locate Mr. Gable. As stated above, there were often other people at our residence as well. I do not know whether other people might have spoken to Mr. Walker on the telephone on January 17, 1989.

5. I testified at Mr. Gable's trial for the murder of Michael Francke. Much of my testimony centered on what I remembered from the night that Michael Francke was killed. I did not review my testimony at trial before I signed the affidavit for the Federal Public Defender. I have recently reviewed my testimony with Department of Justice investigator Mark Anderson. I testified truthfully and the events were relatively fresh in my mind when I testified. The events are not fresh in my mind now, over 25 years later.

6. I was interviewed by police officers several times prior to Frank Gable's trial. Although I was given a polygraph examination, I was not pressured by the police officers, and they did not try to manipulate me to say things that were not true. My statements to police were

truthful. Some of the statements I made to police are attached. I have reviewed these statements, and I stand by these statements. *See* Attachment 1. Among the statements I made to police are the following:

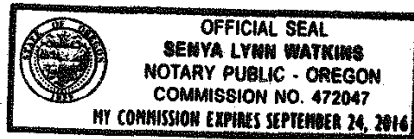
- a. After police first contacted Mr. Gable regarding the Francke murder, he “stated to me that if I give the cops anything to go on, he would kill my ass.”
- b. One time when Mr. Gable was threatening me, he stated: “I know what it’s like to watch someone die, someone bleeding, gasping for their last breath of air.”
- c. “Frank made the statement that he knew what really happened, regarding the Francke murder, about two weeks after the murder.”
- d. “Frank has never said to me that he killed Francke. He has said that he knows what really happened.”
- e. “Frank told me sometime during the end of March/early April that he had something to do with the death of someone, then stopped.”

7. When Mr. Gable would make statements such as those set out above, I was curious, but I did not press for further information because I was afraid of Mr. Gable and I really did not want to know more due to the seriousness of the statements.

8. I recall that approximately three to four months after the death of Michael Francke, Mr. Gable and I were in an argument about our finances. Mr. Gable exploded into a rage and broke my arm. After breaking my arm, Mr. Gable apologized and told me that I did not understand the pressure he was under. Mr. Gable started crying and told me: "I stuck the guy." I then asked Mr. Gable: "What guy?" Mr. Gable then responded: "The guy at the hospital." I told the *Oregonian* about this incident as well. See Attachment 2. My statement to the *Oregonian* was accurate and truthful.

Janyne M. Vierra
JANYNE VIERRA

SUBSCRIBED AND SWORN to before me this 5th day of June, 2015.



Senya Watkins
Notary Public for Oregon
My Commission Expires: Sept. 24, 2016

CONTACTS:				CHRONOLOGICAL REPORT			
TE	PLACE	PERSON	INITIALS	C-Client	X-Collateral	W-Wife	H-Home
				E-Employment	O-Office	T-Telephone	
COMMENTS							
-9-89				cont. — State of Nebraska where he came from originally and where he says his family lives. I told C/ to get needed info. for preparation of a transfer request. Parole order and Cardex sent to Nancy for changes.			
-13-89	TX	CB		Per Ed. Shaw, Bridgeway, C/ has not contacted him to date. Will ck. w/ C/ 2-14-89 upon rpty..			
-13-89	T	CB		C/ called to advise me of Police contact and that he had contacted Ed. Bridgeway, about TX. C/ told me would discuss issue upon rpty.			
-14-89	O	CB		w/ky. Rpts. (7 wks.) — M/R completed for file w/ note on back concerning Police contact involving info. C/ had on a Robbery suspect located at a Dairy Queen in Salem. C/ advised me he did not want to be an informant, but that he did give the officer (Officer's Card attached to file M/R) requested suspect info.. Continued next pg..			
important							
003465							
30-FS34							

important
003465

30-FS34

CONTACTS:

CHRONOLOGICAL REPORT

DATE	PLACE	PERSON	INITIALS	COMMENTS
2-14-89				<p>Cont. — During this time of indicated also that he had info. on the Frankie murder. I pursued this w/ C who stated, "I don't want to discuss it until I can put it all together." "All I'll say is at least seven people were involved and it has to do w/ a riot in Mexico. After a few minutes I stated, "I saw it happen." "I saw 4 Mexicans run to a Black LTD and a malibu and one run away on foot." "I chased him for about 3 miles after I ran behind the Dome bldg. in an effort to cut him off." "I threw a rock and hit him in the back of the head but he kept running." "I tried following the blood but I tripped over a little 2' fence and lost him." I asked if he saw Mr. Frankie's murder before or after he shot and he said, "after while I was walking back home (Monterrey) I caught it out of the corner of my eye." I asked what he saw and he stated, "The carnation in the</p>

003166

30-FS34
1 6/97

CONTACTS:

CHRONOLOGICAL REPORT

DATE	PLACE	PERSON	INITIALS	COMMENTS
2-14-89				cont. — Parking lot, there were five (5) mexicans struggling w/ this guy and he dropped to the ground. "one" ran east around the bldg. and the other four (4) ran towards the cars, got in, and drove off. "That's when I tried chasing the guy on foot." "I've been out every night since doing my own investigation and I've narrowed it down to one guy." I asked who and he said, "I'm not going to say until I've put it all together, I do know that it was a planned hit by the mexican mafia and it's been planned for several yrs. from what I've learned from inside the point." "you know Stan I've stopped 11 rapes around here because I'm out and about at night and I know what to look for." I asked where and he said, "here and there mostly at Oregon State. I mean Willamette." TX AS I told of I wanted him to talk w/ Tom Mason, Salem P.D., and he said, "I haven't talked to anyone

003467

30-FS34
1 6/87

CONTACTS:

CHRONOLOGICAL REPORT

DATE	PLACE	PERSON	INITIALS	C-Client E-Employment	X-Collateral O-Office	W-Wife T-Telephone	H-Home	COMMENTS
2-14-89								Cont. — since it happened because I thought they would suspect me, you know Stan I've never carried a knife I use to to carry a gun and knife but I don't now. I again requested I speak w/ Tom Mason indicating the info. would have to be rptd. by me anyway and it should come from him. I stated, "I don't want them to ask me to take a polygraph or hard ass me around." I advised him that Det. Mason was easy going and that I didn't trust many people but I did trust Tom whom I've know for along time. I agreed and Det. Mason was contacted. Det. Mason spoke w/ I over the phone and they set up a mtg. The interview was terminated and since I had asked I to wait for such a long time missing his bus, I again requested a CO. from M.C.R.C. take him home.
2-14-89								Det. Mason again called and was

003468

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C107

OREGON STATE POLICE
POLYGRAPH EXAMINATION

0001208

J: Mr. Emil E. Brandaw

Regarding: MURDER INVESTIGATION (FRANCKE, JAMES MICHAEL - DOB: 10/02/46)

Examination requested by: OREGON STATE POLICE - SALEM

Examination conducted at: COOS BAY POLICE DEPARTMENT Date: 09/15/89

Name: GABLE, FRANK EDWARD Address: 9646 WILDWOOD DRIVE, NORTH BEND, OREGON

SS# 503-84-0150 DOB: 08/28/59 POB: SOUTH DAKOTA Sex: M Race: W

Ht: 6'1" Wt: 185 Hair: BLACK Eyes: BROWN

Married: MARRIED Name of Spouse: JAYNE

Occ: DELIVERY TRUCK DRIVER Employer: MARSHFIELD BARGAIN HOUSE

Medical History: GOOD; HAD RHEUMATIC FEVER TWICE; DOESN'T SMOKE; HAS NOT TAKEN ANY MEDICATIONS OR DRUGS IN THE LAST 8-HOURS.

Education: COMPLETED 6TH GRADE. HAS GED AND SOME COLLEGE.

Criminal History: ADMITS TO: ROBBERY, BURGLARY, KIDNAPPING, ASSAULT, THEFT, FORGERY, ALMOST EVERYTHING EXCEPT MURDER.

REFER: To Oregon State Police Case #8900672.

ISSUE: On January 17, 1989, James Michael Francke was killed at the Dome Building on the Oregon State Hospital Grounds. Information had been developed by investigative officers that possibly Frank Gable had information concerning the Francke homicide. Upon being interviewed, Mr. Gable said that he had no information concerning James Michael Francke's death.

Investigating officers requested a determination as to whether or not Frank Gable is being truthful in his statements regarding this matter.

PRE-TEST
INTERVIEW:

On September 5, 1989, at 5:30 p.m., this examiner was contacted at the Coos Bay Police Department by Frank Edward Gable. At this time, this examiner advised Mr. Gable of his constitutional rights from the prepared form which he acknowledged and signed.

In the pre-test interview, Gable stated the following: He fears getting off drugs and going back to prison. He got in fights last weekend so he would get thrown in jail. Sometimes he feels safer in jail because people on the outside look down on him for being a con. He can't get along with people on the outside.

POLYGRAPH EXAMINATION
PAGE TWO
GABLE, FRANK EDWARD

0001209

He suspects Buck Burgess had something to do with the murder. He was over at Buck's a couple of days after the murder; he drove up in front of Buck's house and two cops were talking to Buck. Buck walked over and told him he better get out of there, the cops are there talking about Francke.

He further related that he had not killed Francke, he did not know who killed Francke, and he had no personal information about the case other than what he had heard or read in the paper.

No further relevant information was obtained at this particular time.

INSTRUMENTATION:

Frank Edward Gable was examined on a five channel polygraph.

RELEVANT QUESTIONS:

The following are the list of relevant questions of the Matte Modified Quadra Zone Examination given.

1. Did you yourself stab Michael Francke? No
2. Did you participate directly in any way in the death of Michael Francke? No

The following are the list of questions used in the Peak of Tension Polygraph Examination given:

1. Do you know if the knife that stabbed Francke is in a body of water? No
2. Do you know if the knife that was used to stab Francke is close to the hospital grounds, but outside the boundaries? No
3. Do you know if the knife that was used to stab Francke is still located somewhere on the state hospital grounds? No
4. Do you know if Buck is the one who disposed of the knife that was used to stab Francke? No
5. Do you know if the knife Salem Police Department took from you is the one used to stab Francke? No
6. Do you know if the knife used to stab Francke is located outside the Salem area? No

POLYGRAPH EXAMINATION
PAGE THREE
GABLE, FRANK EDWARD

0001210

7. Do you know if the knife used to stab Francke is located somewhere in the Coos County area? No
8. Do you know if the knife used to stab Francke is somewhere other than the above locations? No

RESULTS &
CONCLUSIONS:

There were very consistent deceptive responses to both of the above relevant questions, therefore, it is this examiner's opinion that Frank Edward Gable is not being truthful in his responses to those relevant questions.

It should be noted that this test also calls for suspicion, knowledge, and fear of taking the polygraph examination type questions. It is this examiner's opinion that Frank Edward Gable was not being truthful when he answered the question - Regarding Francke's murderer - Do you know for sure who did it? It is also this examiner's opinion that Gable was not being truthful when his response to - Are you hoping the polygraph will make a mistake on this test? as opposed to - Are you afraid the polygraph will make a mistake on this test?

Immediately after the Matte Examination, on his own, without any prompting from the writer, he said that he knew he didn't do well on the questions about - Before going into the state hospital, did you ever plan to kill someone? He remembered during the test, while answering that question, that he had pulled a gun on his brother and threatened to kill him. He remembered another incident where he had pulled a chain on a guy once and threatened to kill him.

It should be noted that the questions that Frank Gable was referring to were the control questions, therefore, control questions become known lie questions.

This examiner pointed out to Frank Gable that he didn't do well on some of the other questions on the test. For example: Are you hoping the polygraph will make a mistake in this test?

Gable: "Yes, I was hoping to prove the machine didn't work. I thought it would be funny if it didn't work."

Examiner: "What about the question regarding Francke's murder; do you know for sure who did it?"

Gable: "No matter if I say yes, or if I say no, they won't believe me."

Examiner: "You also lied when I asked you - Regarding the Francke murder, do you intend to answer truthfully each

POLYGRAPH EXAMINATION
PAGE FOUR
GABLE, FRANK EDWARD

00012100

question about that?"

Gable: "I was thinking that if they caught the guy I would lie, yes, I would lie. I would have to stand on my criminality. If I knew something about it I wouldn't want to rat on the other guy. I was standing on my criminal code."

Examiner: "What about when I asked you - Did you yourself stab Michael Francke?"

Gable: "I was joking around, and told my wife I killed Michael Francke. If I did that, would it show that I was lying?"

Examiner: "What were you thinking about when I asked you if you participated directly in the death of Michael Francke?"

Gable: "I was thinking if people in the joint would think I was a big guy. I wasn't even around at the time, I was home with my wife and friends at the time. I swear to God on a stack of bibles that I didn't do it. May God strike my little 10-year-old girl dead if I did this."

Gable further related that he was listening to some satanic tapes today and was really scared. "I knew the cops were going to come out and really fry me for this."

Two or three months ago in Salem, his wife came at him with a knife (Craftsman), he took it away from her and cut her arm with it.

At this point Frank Gable indicated that he had to use the restroom; when he returned from the restroom this examiner advised him to take a little break, at which time Frank Gable leaned up against the wall and began weeping openly. He slid down the wall into a fetal position on the floor, with his arms around his legs, and his face buried in his knees. He began weeping and sobbing, and stating that he just knew that they were going to roast him on this. Writer then had Gable go back into the interview room and sit down.

At this point, this examiner told Mr. Gable that he would like to talk to him about his Peak of Tension test, about how he did on those questions.

Examiner: "I asked you - Do you know if the knife that stabbed Francke is located in a body of water?"

Gable: "Yea, I was thinking about how someone may have thrown the knife in Mill Creek, or some other body of water. Let's

POLYGRAPH EXAMINATION
PAGE FIVE
GABLE, FRANK EDWARD

00001213

see, what other bodies of water are close by; Cascade Lake, the quarry, that's what I was thinking about."

Examiner: "I also asked you - Do you know if the knife that was used to stab Francke is close to the hospital grounds, but outside of it's boundaries?"

Gable: "Yea, I was thinking that whoever killed Francke would be stupid to leave it in the area. It must be somewhere else."

Examiner: "I also asked you - Do you know if the knife used to stab Francke is still located somewhere on the state hospital grounds?"

Gable: "No, I don't think it is anywhere on the hospital grounds. Whoever did it - it must be long-gone."

Examiner: "I asked you - Do you know if Buck is the one who disposed of the knife that was used to stab Francke?"

Gable: "Yea, I think Buck is the one who killed Francke, and if he did, he must have disposed of the knife - that it must be out-of-state or something."

Examiner: "I also asked you - Do you know if the knife Salem Police Department took from you, and has in their evidence room, is the one used to stab Francke?"

Gable: "No, I'm sure that knife wasn't used to stab Francke, that knife was given to me by my father, and I have been trying to get it back."

Examiner: "I also asked you if you knew if the knife used to stab Francke is located outside the Salem area?"

Gable: "Yea, that's what I was thinking. I was thinking it had to be taken out-of-state to Arizona or New Mexico or someplace like that. I think some big-shots in the corrections division killed Francke, if it was a contract killing."

Examiner: "I also asked you if you knew if the knife used to stab Francke is located somewhere in the Coos County area?"

Gable: "No, I don't think it's anywhere in the Coos County area."

Examiner: "I also asked you - Do you know if the knife used to stab Francke is somewhere other than the above locations?"

POLYGRAPH EXAMINATION
PAGE SIX
GABLE, FRANK EDWARD

0001213

Gable: "Yea, I was thinking about the fact that it's outside the Salem area and somewhere like in Arizona or New Mexico. Who would be stupid enough to leave it in the Salem area?"

At this time, this examiner broke contact at about 9:00 p.m. with Frank Gable.

At 12:30 a.m., on September 16, 1989, Detective Ackom, accompanied by Sergeant Salle, was enroute to the Coos County Jail in Coquille when it was learned that while Gable was being transported to the jail he was contemplating suicide.

At 1:20 a.m., this examiner re-advised Frank Edward Gable of his constitutional rights from the prepared form which he acknowledged, and stated "I know my rights, I don't need to sign it." Writer read the rights from the standard card, noting the date, time, and not signing of said card.

Writer started talking with Gable on a surface structure level. Writer first told him that he was concerned about him (Gable), telling the officer on the way to the jail about contemplating suicide. Gable began to weep openly, and put his head on his arms which were on top of the table. After a few seconds, he leaned back and said "Hey man, it's just like I said, they are out to roast me on this. I just know they are going to pin this on me. I am going to fry for this, aren't I Fred? This just goes to show you their out to railroad me on this. I worked so hard to make a life on the outside, and this is what I get. I was trying so hard to get off drugs and alcohol, and I was doing real good too. I wanted to make my wife and dad real proud of me. It all started when they sent me to the state hospital and they labeled me a dangerous offender. Yea, I beat my wife, I get in fights, and it's all because those people on the outside put me down. They won't give me a good job or promote me because I am a con."

Detective Ackom: "Frank, why do you think I came over here tonight?"

Gable: "I don't know man, I just figured you're like all the rest, you just want me to confess to killing Francke so you can be some kind of hero. Well, I can't do it man. It doesn't matter if I say yes, I did it, or no, I didn't, their going to fry me for this anyway. Do you think I did it Fred?"

Detective Ackom: "Frank, I think you are a very troubled, volatile man."

POLYGRAPH EXAMINATION
PAGE SEVEN
GABLE, FRANK EDWARD

0001214

Gable: "What's that mean, volatile?"

Detective Ackom: "You're a volcano waiting to erupt."

Gable: "Oh man, that's because of all this other shit, the drugs, beating my wife, then calling me a dangerous offender. It's not cause I killed Francke."

Detective Ackom: "Anyway Frank, I'm here because I care about you, and suicide is such a waste."

Gable: (Light chuckle) "Oh, I'm not going to kill myself, I'm not that stupid, but that's what I feel like with this shit coming down on me like this. You don't need to put a suicide watch on me or anything like that."

Detective Ackom: "Frank, I'm just as interested in finding out that you didn't do it, as finding out you did do it. If you did this Frank, there won't be anything I can help you with. The evidence will speak for itself. However, there are some things you can help me with that may tell whether or not you did this. For example, let's talk about the knives you own."

Gable: "The only knife I own is the one that Salem Police Department has. My dad gave it to me, but that was a long time after Francke was killed. (Note: Frank puts his hand to his forehead and says - "Wait a minute, I did have a knife, and I think it was before Francke was killed.") My friend, Chris, gave me a knife before Francke was killed. I don't know Chris' last name, but he lives behind the IGA store on Center, near Lancaster. It's those apartments behind IGA #7 or #17, or something like that. Chris has boxes of knives, man. It was a hunting knife, you know about this long." (Demonstrates with fingers.)

Detective Ackom: "You mean about 7 inches Frank?"

Gable: "Yea, six or seven inches. It wasn't one of those commando knives or anything like that, it was more like a hunting knife. Hey man, I didn't kill the dude. I bet this shit is coming from Mike Kearns, Mike was bragging about it, you know, saying shit like "The fucking punk got what he deserved." Mike was also talking about the KU (Keizer underground). I didn't know what the fuck he was talking about."

Detective Ackom: "Frank, let's talk about a possible alibi for that night."

0001215

POLYGRAPH EXAMINATION
PAGE EIGHT
ABLE, FRANK EDWARD

Gable: "I had to be with Chris that night, I am always with Chris. I almost got a divorce back then because I was seeing so much of Chris. I was always doing dope with Chris. He and I were dealing in dope. I was selling or trading everything I had back then to buy dope. I was either selling or trading for dope."

Detective Ackom: "What does Chris look like, Frank?"

Gable: "Chris has sandy-brown hair, mustache like yours Fred, rings on all his fingers, he's 5'11", 180, muscular. He lives at Cross and 12th Street behind the Veteran's Thrift Center, in a big white house."

Detective Ackom: "So you were with Chris that day and evening?"

Gable: "I don't know man, I was either with Chris or home, but I believe I was home with my wife, yea, Jason Farm was probably there. Kevin Walker and a guy named Russell. Russell lives in the same apartments, Candella, I believe, my wife knows where. He doesn't live there anymore. Yea, I believe I was home. All I can tell you Fred, is I wasn't on the hospital grounds. I didn't kill Michael Francke, I don't know who killed Michael Francke. I know it is going to sound pretty stupid on the stand, but that is what I am sticking with."

Detective Ackom: "Frank, what about the murder weapon? We were talking earlier about locations of the knife or murder weapon."

Gable: "I was thinking, If I were the killer I would throw it in Mill Creek or depending on which direction I ran, let's see, what other bodies of water are around there. Cascade Lake or the quarry."

Detective Ackom: "You said earlier that you thought the knife was outside the Salem area in Arizona or New Mexico."

Gable: "Yea, I know, but I was figuring it was a contract killing, and it was a big-shot from down there. Hey man, when you ask me any questions about this, my mind keeps saying "You did it, you did it, you did it, and all the time I know I didn't."

Detective Ackom: "I don't understand Frank, you mean part of you is saying you did it, you killed Francke, and the another part says you didn't?"

POLYGRAPH EXAMINATION
PAGE NINE
GABLE, FRANK EDWARD

0001216

Gable: "Yea, It's like the back part of my brain (gestures with right palm against back of head), says I did it, and the front part (gestures with right hand to forehead), says I didn't. I don't know man, maybe my brain is so fucked up in thinking I did it, man."

Detective Ackom: "Well, you know if you did it Frank. The guy that did this was not unconscious Frank, if you did this you would certainly remember it."

Gable: "Fred, it doesn't matter if I said yes I did it, or say no I didn't, they are going to fry me on this."

Detective Ackom: "Frank, do you think they have enough to charge you right now on this?"

Gable: "Yea, they probably do. I don't know man, it doesn't matter, I will stick with this story to the end. I know you want me to make a great big hero out of you (Note: Large smile), but I can't man, I don't think they have anything man. They want to (starts to weep; no sound, tears streaming down cheeks) slap this fucking assault wrap on me. It's a fucking domestic beef. My wife ain't going to testify against me man. They just want to put me in jail so they can try and pin this on me."

Detective Ackom: "What do you think God thinks about this Frank? Do you think God will forgive the guy that did this?"

Gable: "Yea, he forgives everybody. I know my Bible, I'm what you call a backsliding Christian. I was a Christian once."

Detective Ackom: "That's right, He forgives people whether they committed a petty theft or a murder. And liars, what does He say about liars Frank?"

Gable: "Yea, I know what the Bible says about all that. He puts liars all by themselves."

Detective Ackom: "That's right Frank, but everything we do like that is a lie isn't it Frank?"

Gable: "Yea, but I'm not saying I did it. I will go to the end of the trial saying that. Fred, there are only two people that know who killed Francke. Francke and God."

Detective Ackom: "Wait a minute Frank, think about what you just said, Francke doesn't know, he's dead."

POLYGRAPH EXAMINATION
AGE TEN
ABLE, FRANK EDWARD

0001217

Gable: (Note: puzzled look on Gable's face) "Then there is only two people that know who killed Francke, yea, me and God."

Detective Ackom: "Hold it, let's back up there. (Frank puts arms on table in front of him, puts forehead on arms face down, turns head towards his left shoulder, looks out the corner of his eye at writer and says with a nervous chuckle, "Yea, Yea, me and God.") Do you know what you just did Frank? You made a Freudian slip, your mouth said what your brain was thinking."

Gable: "I don't know about no Freudian slip kind of shit, man. I am going to go to the end of the trial saying I didn't do this, and I'll be talking to God the whole way. I will go to heaven saying it, and all these mother fuckers will go to hell for lying."

Detective Ackom: "Frank, let's take a little break. Are you hungry?"

Gable: "Yea, a little, but I'll just wait for breakfast."

Detective Ackom: "I'm hungry too, I'll order some sandwiches." (Writer ordered sandwiches - poked his head out of the door and asked for a couple of sandwiches).

Gable: "I can wait until breakfast, but I would take some coffee."

Detective Ackom: "While we are waiting Frank, let's talk about the crime scene, tell me what you know about the crime scene."

Gable: "All I know about it is what I saw in the paper. I know the Dome Building very well man, and I used to work there. Francke parked his car out front, Francke gets stabbed, Francke staggers up front steps to Dome Building, Francke slumps to ground. Francke must have been bleeding, right? I mean if he was stabbed in the heart he must have died right there. You tell me man, there were four sets of people who walked right past him, and not one of them saw him."

Detective Ackom: "The porch area is rather a large area, isn't it Frank?"

Gable: "No man, it's not. I know the Dome Building very well. I used to work there. If Francke staggered up onto the porch at the top of the steps, he dropped there. I mean they

0001218

POLYGRAPH EXAMINATION
PAGE ELEVEN
GABLE, FRANK EDWARD

said he ran his hands through a window or punched it."

Detective Ackom: "Frank, let's do something a little different now. Let me paint a little picture here, and you tell me what you think about it. Suppose I am a business man working at an office downtown, I'm working late and it's dark out, and I go to get in my nice, big fancy car, and there is a guy about to break into it. I confront him, startle him, he freaks out and stabs me."

Gable: "Wait a minute, I know what you're trying to do Fred, you're trying to get me to say I'm the guy who killed Francke. That I was trying to break into his car or rob him or something. I'm not a robber, burglar, or thief. I don't do that shit, man. I know you would like me to make you a great big hero Fred (Note: concerned look on face), but I just can't."

At 3:05 a.m., Sergeant Salle knocks on door; wants writer to ask for Consent to Search on mother-in-law's house, where Gable's belongings were stored.

At 3:10 a.m., the writer re-entered the room and read a Consent to Search form to Gable.

Gable: "I don't think I want to do that. My mother-in-law hates me. She probably would say every fucking knife in the house was mine, so they could frame me on this. This has gone too far, in fact I don't want to talk to the cops or anyone else until I talk to a lawyer."

At this point Detective Ackom ended all contact with Frank Gable. Detective Ackom did not ask him anymore questions, and called for the jailer to return Gable to his cell.

Fredrick E. Ackom

340-21 Fredrick E. Ackom, Detective
Polygraph Examiner

FEA:lbd

c: Oregon State Police - Salem
Marion County District Attorney

"Tape received and typed 09/18/89

CASE NUMBER SP8900		SEO Evidence #89-016		INFORMATION REPORT DEPARTMENT OF STATE POLICE SALEM, OREGON 97310		DISTRIBUTION	
1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution-Complainant <input type="checkbox"/> No Prosecution-Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER		<input checked="" type="checkbox"/> Gen. Hdq. <input type="checkbox"/> Arson <input type="checkbox"/> Document <input checked="" type="checkbox"/> Dist. Hdq. <input type="checkbox"/> Narcotic <input type="checkbox"/> Ident. <input type="checkbox"/> Crime Lab <input checked="" type="checkbox"/> Other Marion County D.A.	
4. Original Report Date 01-18-89, Wednesday	5. Time 12:48AM	6. Written By Kenneth P. Pecyna, Detective	7. This Report - Date 11/27/89	8. Time 8:00 a.m.	9. County Marion		
10. Victim or Complainant FRANCIS, JAMES MICHAEL	11. Residence Address 21058 Hazelnut Ridge Road Scotts Mills, OR 97375		12. Res. Phone --	13. Sex M	14. Race W	15. D.O.B. 10-02-46	17. Total Value of Recovered Prop. (Itemize Below)
16. Subject of This Report FOLLOW-UP INVESTIGATION							
18. Details: (Use Additional Plain Sheets as Necessary)							
REFER TO: All reports bearing General Headquarters Case #SP8900672.							
MENTIONED FOR DATA ENTRY: CHILDERS, EARLE FRANCIS DOB: 03/12/48 OSP Inmate No. 52043							
MENTIONED: PECYNA, KENNETH P. Detective OSP FERDER, PAUL Attorney - Salem							
NARRATIVE: On January 18, 1989, at 12:48 a.m., security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections' Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.							
ACTION TAKEN: On November 22, 1989, at 3:40 p.m., the writer and Detective Pecyna contacted Earle Childers at the Salem Patrol office. Childers was interviewed because of his association with Frank Gable and information learned that Gable had talked with Childers about the Francke homicide and information that Childers had seen Frank Gable drive away from the State Hospital grounds on "D" Street from Medical Center buildings across from the Dome Building. Childers had been previously contacted by the writer and Detective Pecyna and had given information that was not consistent with other witnesses in this case. Through negotiations with Earle Childers and his attorney Paul Ferder, an interview was set up to determine Childers' knowledge of the Francke homicide. Childers explained that he was hesitant to give the information in prior interviews because of his concern about his well-being while being incarcerated and, in fact, had been threatened at the Penitentiary on more							
Reporting Officer's Signature Loren T. Glover		Date 11-27-89		Time 10:21		Number 102-21	
Other Agencies Notified		APB Numbers and Dates		Approved By KJN		Date 11-27-89	

CHILDE EARLE FRANCIS DOB: 03/12/48
OSP Inmate No. 52043
Page 2

ACTION TAKEN:
(Cont.)

than one occasion by unknown persons placing threatening notes in his clothing. A signed statement was received from Earle Childers contained in the writer's notebook. (Refer to attached statement.) Childers stated in substance that he met Frank Gable in approximately late December or early January 1989. Childers went to a meeting at the Welcomaa Club at "D" Street near the Lancaster Mall on the night of January 17th, 1989. He was dropped off at the meeting by his wife at approximately 3:00 p.m. and he waited until she left and went to the Mall and Fred Meyer's. He shoplifted a few items and got the money by returning the items to the store. When it was dark and he was walking west on "D" Street between 6:30 and 7:30 p.m. and near the roadway of 23rd Street, a car pulled out of the medical offices. The car headed east on "D" Street and Childers recognized the car as belonging to Frank Gable. The car was a gold Supra with a black louvers on the back window. Childers observed Gable driving the vehicle. He recognized Gable wearing sunglasses. Gable was in a hurry and moving right along. Childers whistled and waved when Gable went by but Gable did not pay any attention. Childers knew it was the 17th of January because the next day he heard the information about the killing of Michael Francke. A couple of days later he called Gable on the telephone and Childers mentioned the fact about seeing Gable on the night of the 17th. Gable said, "Forget you saw me. It never happened." Childers dropped the issue and did not connect the killing of Michael Francke with seeing Frank Gable. On approximately April 9th, 1989, Childers was arrested by the State Police for driving a stolen vehicle. He was sent to the Penitentiary and walked away from DCRC on July 11, 1989. He walked directly to Mark Gesner's house on Hine and Maple Street in Keizer. On approximately the 14th or 15th of July at around 8:00 or 9:00 p.m., while at Gesner's house, and Rachel was home, Gable arrived and chatted with Childers. Gable told Childers that he had been arrested and indicted on the Francke case. Gable said that they did not have anything on him so they let him go. Later that evening, Childers walked to Gable's house with Gable. While on the walk and talking about small-talk, Gable said he did it and he was the one that killed Francke. Childers said, "You're shittin' me!" Gable said he was going through cars and he was in one car and Francke came out and caught him and started to take him into the building to call the cops and was holding him by the arm. Gable said he stuck Francke three or four times in the chest. Gable said, "I always knew he was a cock-sucker and now he always will be." Childers said, "You killed the guy over getting into his car?" and Gable said, "He was going to turn me into the police and I did not want to go back to prison."

Continued.

CASE STATUS:

LTG:lp

002137

CHILDE, EARLE FRANCIS DOB: 03/12/48
OSP Inmate No. 52043
Statement

On November 22, 1989, at 3:40 p.m., Detective Loren T. Glover and Detective Kenneth Pecyna contacted Earle Childers at the Patrol Office. He gave a signed statement contained in Detective Glover's notebook. Statement begins:

"On approximately late December 1988 or early January 1989, I met Frank Gable through Mark Gesner. I was at the Bi-Mart on Lancaster and Gable and Gesner were in a car together. They were in Mark's VW stationwagon. All of us drove over to Gable's house at the apartment on Hyacinth Street. They wanted me to score some Dilauidids for them. I had 40 or 50 of them and I was going to trade them for crank. I traded them for 3/16's crank. There was a lot of people at the apartment. Janyne was there and possibly Nick. I don't know the other people's names. Mark and Gable gave me a ride home to 1790 High Street SE, Salem. A week or so later Mark or Gable, one or the other, got ahold of me in person and wanted to make the same deal again. Mark picked me up at the Izzy's Pizza on Lancaster. I gave Mark and Gable 30 Dilauidids for crank, but I only got about a 1/16th that time and they owed me the rest. It was only two or three times that I dealt with Frank prior to the Francke homicide. Prior to homicide, Gable carried a baseball bat in his car, a .380 auto with a brown handle and black finish. It was a Smith and Wesson, I think. Gable had a brown-handled butcher type knife with a 7 or 8 inch blade with a single edge. Gable carried it under his jacket. The handle looked more like a hunting knife. I could say the blade was 1 or 1 1/4 inch wide. Gable also had a double-edged real thin bladed knife almost like a letter opener. Gable also had a sheath for the longer knife. Gable was tweaking pretty hard prior to the homicide. I had never heard Gable or Gesner talk about a plan for a murder or robbery. I went to a meeting at the Welcomaaa Club at "D" Street near the Lancaster Mall on the night of January 17, 1989. I was dropped at the meeting by my wife at approximately 3:00 p.m. I waited until my wife left and went to work at the Salem General Hospital Rehab Center. I went to the Lancaster Mall and Fred Meyer. I shoplifted a few items and got the money by returning the items to the store. When it was dark and I was walking west on "D" Street, I believe it was 6:30 to 7:30 p.m., I was near the roadway walking toward 23rd Street. A car pulled out of the medical offices. The car headed east on "D" Street. I

CHILDE, ARLE FRANCIS DOB: 03/12/48
OSP Inmate No. 52043
Statement
Page 2

recognized the car as belonging to Frank Gable. The car was a gold Supra with black louvers on the back window. I saw the car as it pulled out of the parking area onto "D" Street. He was either coming out of Medical Center Drive or parking area. I was approximately 50 feet east of 23rd Street when Gable pulled out. I observed Gable driving the vehicle. I recognized Gable wearing sunglasses. I did not see his clothing or anyone else in the car. Gable was in a hurry and moving right along. I whistled and waved when he left and went by because I had some Dilauidids in my pocket and I wanted to make a deal. Frank never stopped or made any indication that he had seen me. I observed Gable continue eastbound to the four-way stop at Park Street. Gable turned left and I lost sight. I walked to across 23rd and walked down behind the Rehab Center to Center Street and on to my wife's house on High Street. I stayed home the rest of the evening and my wife came home about 11:30 or 12:00 a.m. We went to bed and the next day was usual. I believed I stayed home that day. I remember my wife telling me how frightened she was because someone had been killed over at the Dome Building. I don't think I went to the meeting club that day. The reason I know it was the 17th of January was because I had heard the information about the killing the following day of seeing Gable driving his car out of the medical center offices area. A couple of days later I got ahold of Mark and Gable to make a deal on dope. I was at Gable's apartment and he asked if I wanted to buy a black, long leather coat. I did not like the coat so I did not buy it. I had called earlier that day and talked to Gable and that is when I mentioned the fact about him not stopping when I saw him the evening of the 17th. Gable said, "Forget you saw me. It never happened." I dropped the issue. I did not connect the killing with Gable because I did not know that Janyne, Gable's wife, worked over the State Hospital. Somewhere around the end of January I took and left my wife and went to Reno. I stayed with my mother and came back sometime between the 15th and 17th of February. It was right around my son's birthday. I moved back in with my wife after she picked me up at the airport. I stayed with my wife and was trying to kick the Dilauidids. I was using crank

CHILDE ARLE FRANCIS DOB: 03/12/48
OSP Inmate No. 52043
Statement
Page 3

to kick the Dilauidids. I began connecting with Gable again and was chasing crank. I was between March and April, I was boosting a lot of Dilauidids at Bi-Mart on Lancaster. Gable was hanging out a lot at Chris and Shelly's. I was writing prescriptions for myself at Bi-Mart. I remember one time I was with Gable and Shelly was having trouble with her boyfriend and Gable was sticking up for her and told me that he would just stick the guy and I said, "Why would you do that?" and Gable said, "It wouldn't be the first time." Also I never saw the wood handled knife I described that Gable had after the homicide. I don't know the name Jodie. Gable also had a briefcase that was brown leather at this time. Gable kept his stash in a book that had a false middle inside. I think there was some knives in there at one time. I believe I was arrested on April 9th at I-5 and Santiam Junction by the State Police. I was driving a stolen vehicle. I was sent to the Penitentiary and walked away from DCRS on July 11, 1989. I went to Gesner's house on Hine and Maple in Keizer. I stayed at Gesner's house. Gable showed up on approximately the 14th or 15th of July at 8:00 or 9:00 p.m. at Gesner's house. Rachel was home and Gesner was gone. Gable and I chatted until Gesner got home. Gable gave me a little crank. There was a conversation in the dining room while Rachel was in the living room. Gable looked terrible like he had been doing a lot of crank. Gable told me he had been arrested and indicted on the Francke case. He said, "They did not have anything on me so they let me go." He said one day he was walking down the street in Salem and Mike Keerins was in a unmarked car and pointed at him. The police arrested him and put him in jail with Mike Keerins to pump him for information. He did not tell Keerins anything so the police released him. I had gone into the bathroom and did my crank and came out and asked Gable, "Did he do it?" and Gable did not say, "No." He just did not give me a concrete answer. I think Rachel could have overheard the conversation going on. Gesner came home about 10:00 or 10:30 p.m. Approximately 11:00 a.m., Gable, myself, Rachel and Gesner went on a walk over to a house near Capitol and "D" Street at some apartments. They, Gable and Gesner, were talking about burglarizing the house. The guy who lived there was in

CHILDER ARLE FRANCIS DOB: 03/12/48
OSP Inmate No. 52043
Statement
Page 4

custody and Gable said he knew there guns and a lot of stuff in the house. We did nothing and we turned back to Gesner's house. I asked Gable if I could borrow a couple of shirts and Gable and I walked to Gable's house behind Bi-Mart in Keizer. Janyne was home. Gable gave me a couple of shirts. On the way over to the apartment, during our walk to Gable's, Gable told me after talking small-talk and me asking him about the jail thing, Gable said he did it and he was the one that killed Francke. I said, "You're shittin' me!" and Gable said he was going through cars and he was in one car and Francke came out and caught him and started to take him into the building to call the cops and was holding him by the arm. Gable said he stuck Francke three or four times in the chest. Gable said, "I always knew he was a cock-sucker and now he always will be." I said, "You killed the guy over getting into his car." Gable said, "He was going to turn me into the police and I did not want to go back to prison." I could sense that Gable was getting angry while telling me this. Gable told me he did not get out of the car what he wanted. I asked what he was after and Gable said he was after a gun. Gable never talked about what weapon he used or what he did with it. I never really asked him about it because I chalked it up to bullshit. I did tell Gesner the next day at Gesner's house about the story Gable told me the previous evening. I did not start putting things together until the information began coming out in the paper about Gable and Mike Keerins and when the State Police questioned me and asked me, "Did I think Gable could have done this if he was cornered?" I have never talked to anyone about this information except Gesner, the State Police and my attorney. This statement is true to the best of my knowledge. I gave this statement freely and voluntarily."

/s/ E. Childers

11/22/89

002141

CASE NUMBER*		SPO Evidence #89-016		INFORMATION REPORT		DISTRIBUTION	
SP8900		OREGON STATE POLICE - SALEM		DEPARTMENT OF STATE POLICE		Arson Narcotic Document Ident.	
AGENCY		SALEM, OREGON 97310		CRIME LAB		Arson Narcotic Document Ident.	
1. TYPE OF REPORT		2. CASE STATUS		3. ORIGINAL SUBJECT OF THIS REPORT		4. DISTRIBUTION	
<input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		<input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution-Complainant <input type="checkbox"/> No Prosecution-Dist. Atty. <input checked="" type="checkbox"/> Pending		MURDER		<input checked="" type="checkbox"/> Gen. Hdq. <input checked="" type="checkbox"/> Dist. Hdq. <input checked="" type="checkbox"/> Crime Lab. <input type="checkbox"/> Other	
4. Original Report Date		5. Time		6. Written By		7. This Report - Date	
01-18-89, Wednesday		12:48AM		Kenneth P. Pecyna, Detective		01-26-90	
10. Victim or Complainant		11. Residence Address		12. Res. Phone		13. Sex	
FRANCIS, JAMES MICHAEL		21058 Hazelnut Ridge Road		--		M	
16. Subject of This Report		17. Total Value of Recovered Prop. (Itemize Below)		18. Details (Use Additional Plain Sheets as Necessary)		19. County	
FOLLOW-UP INVESTIGATION						Marion	
18. Details (Use Additional Plain Sheets as Necessary)						15. DOB-46 10-02-46	
REFER TO:		All reports bearing General Headquarters Case #SP8900672.					
MENTIONED FOR DATA ENTRY:		None.					
MENTIONED OTHERS:		HARDEN, CAPPIE CLIFFORD (Previously Identified)		SWEARINGEN, JODIE MAE (Previously Identified)			
EXHIBITS:		GABLE, FRANK EDWARD (Previously Identified)					
NARRATIVE:		One (1) micro cassette tape marked WJP #1, dated 01-20-90, Harden interview. Cassette is currently held in evidence at State Police, Salem. See attached copy of taped interview transcript.					
ACTION TAKEN:		On January 18, 1989, at 12:48 a.m., security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections' Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.					
Reporting Officer(s)		Off. I.D. Number 688-14		APB Numbers and Dates		Date	
William S. Pierce, Detective						2/8/90	
Other Agencies Notified		Date		Time		Method	
Form 77A							

Harden believed he had obtained five knives since the day of the murder from John Bender and believes that one of the knives, a folding two bladed pocket knife, may be the murder weapon as it was the one he obtained from Bender most recently after the murder. He stated that it was obtained from Bender two to three days after the Hyacinth Street house was busted and that Bender and his wife, Kelly, had both come to his apartment, located at 638 Center Street, and he paid them five dollars for the knife. Harden stated the knife was located at either one or two places in Salem, residence of Sherry Sanders or a friend of his. He stated the rest of the knives were located amongst a large knife collection that is currently being held by a individual 003603, Polk County, near Devil's Lake, by the name of Ken Rush, who is holding the knife collection for him.

INFORMATION REPORT
HARDEN, CAPPIE CLIFFORD
PAGE 3

ACTION TAKEN:
(cont'd.)

At 10:45 p.m., Sergeant John Salle, State Police, Salem, became involved in the interview with Cappie Harden with myself, and at that time Harden was questioned about his knowledge of the murder and how he had obtained the information. He then related in substance that Jodie Swearingen told him that she had seen Frank Gable kill someone and that she was scared. Harden also related that several days later, after the murder, Jodie had told him that Frank Gable and John Bender had killed some guy and that she was really scared. Further, that she had witnessed someone being stabbed, that John and Frank had done it on the State Hospital grounds. She also, according to Cappie Harden, said that Frank and John Bender were going to kill her if she ever told anyone about it. Harden also stated that at that time, on the evening of January 17, he had gone back to the Bender residence, about 9:30 to 10:00 and had spoken briefly with Jodie Swearingen and she advised him that Gable was in the residence and in the basement.

At 11:40 p.m., the interview with Harden was terminated, and he advised he would take myself and Detective Fredrickson to the two locations in Salem where several of the knives he'd obtained from John Bender may be located. Both locations were contacted, and at one location four knives were seized by consent from James David Craig. (Refer to Detective Fredrickson's reports of Evidence Seizure) At the James Craig residence, the folding knife, with the wooden handle believed to be the first knife purchased by Harden from Bender, was located at that address.

On 01-20-90, Cappie Harden was transported from the Marion County Jail to the State Police Patrol Office, at his consent, to be further questioned about his knowledge in the murder. At 4:39 p.m., prior to the interview, he was advised of his rights and signed the standard rights card and acknowledgment. The interview was conducted by myself and Sergeant John Salle, State Police, District II Headquarters, in Salem. At that time, Harden reiterated the information he was giving was truthful, and he stated that he was not at the murder scene, that he had just heard about it, and he retold his previous accounts of hearing it through Jodie Swearingen and his friend Sam (identified as Frank Harmon) and persistently maintained that he was not at the murder scene. He did state that the information he'd heard about was that a person (holding jigs) wasn't doing the job, and that a dude was surprised. He explained that holding jigs was the street term for the person being the lookout, wasn't doing their job, and an individual who was jockey boxing a vehicle was surprised by the owner. The interview was then terminated at 5:50 p.m., this same date.

At 8:00 p.m., the interview with Harden was continued and after discussing the matter with him at some length, at 8:30 p.m., he admitted that, in fact, he was there at the murder. At that time, Harden expanded his original story of the information to say he was called to the Dome Building grounds by Jodie Swearingen who had phoned him and requested that he pick her up at that location.

003510

ACTION TAKEN:
(cont'd.)

He related that he had driven up in his Mustang and was sitting waiting for her when he observed another vehicle dome light come on that was immediately to his left in the parking circle and that he observed Frank Gable get in the vehicle. The dome light closed and a few minutes later, his attention was attracted back to the same vehicle, when he heard a subject yell, "Hey, what are you doing?" and when he looked up, he saw a man with his arms outstretched near the car, going for the door, further describing the individual as dressed in business clothes. He then stated he saw Gable exit the vehicle with something in his right hand and making stabbing motions, striking the subject in the business suit and at that time Harden stated he was attempting to start his vehicle, which could be turned off with the ignition key but had to have the wires connected to start. While he was starting the vehicle in an attempt to leave the area, Harden stated that he looked up again and Jodie was at that time in his vehicle when the incident occurred and he saw Frank Gable move towards the front of the vehicle and that was the last thing he saw when he left the scene.

At 10:00 p.m., same date, 01-20-90, myself and Detective McLain, State Police, Tillamook, and several other detectives, met at the Dome Building grounds with Cappie Harden for him to show the area which he believed he was parked at the time.

At 10:40 p.m., Harden was returned back to District II Headquarters, where he was again asked about the sequence of events occurring prior to the murder, and he then advised that he now recalled that rather than Jodie Swearingen just showing up at his residence, that he recalled receiving a phone call from her, and that he had sent Adam in his car to Dundee to pick her up. I believe Adam is an individual identified as Hernandez, who was at the Bender residence at the time.

At 11:20 p.m., the same date, the interview was terminated at Harden's request and Harden was returned to Marion County Jail.

On 01-21-90, at 10:30 a.m., Harden was recontacted at the jail and transported to State Police District II Headquarters, where the scene was discussed with Cappie Harden in the presence of his attorney, Craig Rockwell. At 12:00 p.m., Harden was transported by myself and Sergeant Salle back to the Dome Building grounds and he again pointed out the area in the lot where he believes he was parked on the night the Francke murder occurred.

At 5:24 p.m., the same date, Harden was interviewed by myself and Sergeant Salle again on the circumstances and his whereabouts at the time of the murder on January 17, 1989. The interview was tape recorded and prior to the interview, he was again advised of his rights (See attached copy of transcript of taped interview).

The interview was then terminated at 5:43 p.m., the same date, and Cappie Harden was returned to the Marion County Jail.

003514

ACTION TAKEN:
(cont'd.)

On 01-22-90, Cappie Clifford Harden was recontacted at 1:00 p.m. at the Marion County Jail, transported to the Salem Patrol Office where he agreed to further questioning about his statement as made the previous day. At that time, he remained consistent in his statement of the events that occurred on January 17, 1989 and 4:20 p.m., the same date, he was returned to the Marion County Jail.

On 01-24-90, Harden was again picked up at the Marion County Jail and transported to State Police, District II Headquarters, for an additional interview at his request. Prior to the interview, he was advised of his rights and signed the standard rights card of acknowledgment at 3:07 p.m. Harden then maintained his story to date had been truthful as it was given on the taped interview on January 21, 1989. At 6:50 p.m., he was interviewed again about the circumstances surrounding the events that occurred on January 17, 1989, when Michael Francke was murdered, and Harden expanded his original taped statement to say that he, in fact, had been with Gable on the Dome Building grounds previous to the murder. The interview was conducted by myself and Sergeant John Salle.

Harden related in substance his story as given on the tape transcript was true to his knowledge about what had happened when he saw Gable enter the Francke vehicle and the ensuing confrontation when he saw Gable stab someone in business-type clothes. He did at that time admit; however, he had been untruthful about having been with Gable earlier in the day. At that point he related that he had picked up Jodie Swearingen at the Bender residence after receiving a call from her requesting a ride. She requested that he drive her to the area of Park Street, near the State Hospital grounds and pick up an individual as a favor that she owed him. Harden stated that he was directed by her to a street off of Park and at that location they met Frank Gable who he described dressed in the same blue or black sweatsuit, enter his vehicle holding a pair of black leather gloves with something else stuck inside the gloves. He stated that he did not see a knife, but that it could have been a knife he was holding inside the gloves in his hand. He stated that he was advised by Gable to drive to a parking lot area containing a large number of cars across a grassy strip from the Dome Building circles. At that time, as they drove to the scene, Harden stated that Gable was sitting in the passenger side of his two door Mustang and that Jodie Swearingen was sitting kind of in the middle of the back seat. He stated when they arrived at the parking lot across the grassy area from the Dome Building circles, that they were pointed toward the Dome Building parking circles. Gable exited the vehicle, and he assumed that Gable was going to jockey box cars at that parking lot, and directed to him, Harden, to drive and wait for him at the circle parking area of the Dome Building.

At 7:40 p.m., myself and Sergeant Salle drove Cappie Harden around the area of the Dome Building, and he advised he entered the area with Jodie Swearingen on "D" Street, had turned onto Park Street, then onto Knox, and from Knox, he took Edina back to "D" Street, where they proceeded back to the 25th Street entrance to the hospital parking lot with Gable and the vehicles. Harden

INFORMATION REPORT
HARDEN, CAPPIE CLIFFORD
PAGE 6

ACTION TAKEN: advised myself and Sergeant Salle that his story is true about what he saw in the parking circle
(cont'd.) and he still maintains that he saw the murder through his driver's door window which was opened
approximately six inches.

At 8:59 p.m., Harden was then returned to the Marion County Jail.

CASE STATUS: Continued.

003516

CASE NUMBER SP890067		SFO Evidence #89-016		INFORM ON REPORT DEPARTMENT OF STATE POLICE SALEM, OREGON 97310				DISTRIBUTION <input checked="" type="checkbox"/> Gen. Hdq. <input type="checkbox"/> Arson <input type="checkbox"/> Document <input checked="" type="checkbox"/> Dist. Hdq. <input type="checkbox"/> Narcotic <input type="checkbox"/> Ident. <input type="checkbox"/> Crime Lab <input checked="" type="checkbox"/> Other <u>Marion County D.A.</u>			
1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Cir. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution-Complainant <input type="checkbox"/> No Prosecution-Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER							
4. Original Report Date 01-18-89, Wednesday	5. Time 12:48AM	6. Written By Kenneth P. Pecyna, Detective	7. This Report - Date 10/17/89	8. Time 5:25 P.M.	9. County Marion						
10. Victim or Complainant FRANCHE, JAMES MICHAEL		11. Residence Address 21058 Hazelnut Ridge Road Scotts Mills, OR 97375		12. Res. Phone --	13. Sex M	14. Race W	15. D.O.B. 10-02-46	17. Total Value of Recovered Prop. (Itemize Below)			
16. Subject of This Report FOLLOW-UP INVESTIGATION											
18. Details: (Use Additional Plain Sheets as Necessary)											
REFER TO: All reports bearing General Headquarters Case #SP8900672.											
MENTIONED FOR DATA ENTRY: SWEARINGEN, JODIE MAE DOB: 05/15/72 WEJ, 5'3", 125 lbs., BRO/HAZ (Previously Identified)											
MENTIONED OTHERS: DORMAN, GUY Detective Oregon State Police Florence COLLINS, TOM Counsel for Jodie Swearingen Business Phone: 648-3020 HARDIN, CAPPY (Previously Identified)											
NARRATIVE: On January 18, 1989, at 12:48 a.m., security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections' Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.											
ACTION TAKEN: On October 16, 1989, at approximately 11:35-11:40 p.m., Jodie Swearingen was taken into custody by Detective Dorman and myself at 710 Liberty Street NE, Salem, Oregon (Marion County). At that time she was very distraught and upset that she'd been taken into custody and was crying and indicating that she was fearful for her life.											
Reporting Officer L. Crawford, Detective		Date 10/15-21		Time 0445-21		Method 005707		APB Numbers and Dates			
Other Agencies Notified		Date		Time		Method		Approved By HN 10-10-89			

SWEARING: JODIE MAE DOB: 05/15/72
WFJ, 5'3", ~25 lbs., BRO/HAZ
(Previously Identified)
Page 2

ACTION TAKEN:
(Cont.)

Her personal items, that being two satchel type bags, and her small purse were transported by Detective Dorman back to the Salem Patrol Office, whereas I transported Jodie Swearingen in my vehicle back to the Salem Patrol Office with Detective Dorman following. It should be noted that the interior light of my car was on during this entire travel back to Salem Patrol Office.

At approximately 11:50 p.m., we arrived at the Salem Patrol Office and Jodie Swearingen continued with her crying, indicating that she was fearful for her safety. Detective Dorman and I then began an interview with this individual in the attempt to initiate a signed statement later on in the interview. Basically this statement reflects that on January 17, 1989, she was with Frank Gable in the evening hours and they had been over at the soccer field which is located on the north end of 25th NE near the junction of Walker Road. This soccer field is commonly referred to as Walker Park. She indicated Frank Gable was wearing a light colored coat, like a top-coat, and fatigues and had a knife with him. This was sometime she indicated prior to dark, and Frank Gable wanted her to go to the Oregon State Hospital grounds to go into a garage that he knew he could get into. This was to travel up the steps to the top floor in the garage where they could "tweek it out."

She indicated that she did not want to have anything to do with this particular type of activity and left and did not go with Frank Gable over to the Oregon State Hospital grounds.

Hours later, she indicated during the evening p.m. hours or early a.m. hours, that being 1-18-89, she again saw Frank Gable at the 25th and State area. Gable was now wearing at this time dark colored jacket and tight levis. She indicated that Frank Gable was bitching about a leather jacket; however she did not know what this was all about.

In response to a question asked as to how she knew this was the 17th of January 1989, she indicated because it was a few days after that that she learned of the Michael Francke death. She indicated that she put two and two together to come up with this conclusion.

She then prefaces this meet with Frank Gable at 25th and State the evening of the 17th or 18th, January, a.m. that Frank Gable was paranoid that evening; more so than that he was just "tweeking."

She further indicated that she was not living on 25th at the time; she was living with an individual identified only as "Shorty," believed to be Cappy Hardin.

She also indicated that it was possible that another person by the name of Duane Robert Cornett was with the two of them in the previous portion of the evening; however she did not specify any further in this statement as to whether or not they were in fact with her.

005708

SWEARING: JODIE MAE DOB: 05/15/72
WFJ, 5'3", 125 lbs., BRO/HAZ
(Previously Identified)
Page 3

ACTION TAKEN:
(Cont.)

She also indicated that she did not wish to be placed in JDH and that she was fearful for her own personal safety. During the conversation with her we were trying to inform her that there was nothing to be fearful for, as nobody would be allowed to harm her.

She was informed that there were numerous other people that were interviewed pertinent to this investigation, and statements were being obtained from them pertinent to Frank Gable.

She indicated to Detective Dorman and myself that she had already taken a polygraph pertinent to this incident and indicated that she had taken this test somewhere in the Portland area and that there was one question that she had trouble with. Both Detective Dorman and myself recall at this particular time as she was explaining this particular question that she had trouble with, that she more or less mumbled over it and did not become very clear in her rendition as to what the nature of the question was.

She also indicated that she was represented by counsel, indicating that she had seen her attorney prior to her taking the polygraph examination and provided the name of Tom Collins, an attorney in the northern portion of the state.

Detective Dorman then left the room and contacted family members of Jodie Swearingen to determine the name and telephone number of this attorney.

At approximately 12:44 a.m. individual Tom Collins was contacted telephonically and inquired of by me whether or not in fact he did represent Jodie Swearingen, as she indicated that she wished to discuss this incident with him prior to any further conversation. Mr. Collins indicated to me that he in fact was representing Jodie Swearingen and he wished to discuss the matter with her prior to me continuing with the interview.

At this time he was allowed to converse with Jodie Swearingen and on this end of the telephone conversation, she indicated the fact that she had been taken into custody and was being interviewed by officers of the Oregon State Police pertinent to Frank Gable.

At 12:47 a.m. I again had telephonic contact with Mr. Collins and he informed me that he did not wish that his client be subjected to any further interviews pertinent to this investigation or any investigation prior to his arrival and conference with his client and the Marion County District Attorney's office. This request was honored from this point forward.

It should also be noted that after this telephone conversation with her attorney, Jodie Swearingen requested permission to telephone her father and inform him that she in fact was in custody and

005709

SWEARINGE)DIE MAE DOB: 05/15/72
WFJ, 5'3", 125 lbs., BRO/HAZ
(Previously Identified)
Page 4

ACTION TAKEN:
(Cont.)

discuss this incident with him. She was allowed to make this telephone call and during this telephone conversation, she more or less became very vocal and physically violent, starting striking the desk, then throwing the phone, and turning and attempting to leave the room, whereas she was forcibly restrained by myself and placed in the chair. I picked up the phone and informed her father that everything was okay at this end of the telephone. He was informed that his daughter would be transported to JDH and that her attorney had been contacted.

At this time, this individual was transported to JDH by Trooper Al Hageman of the Oregon State Police and lodged under the warrant outstanding for this person.

It should be noted that there was no formal statement with this particular type interview with this individual as the interview was just getting started when she indicated that she wished to discuss this matter with her attorney.

CASE STATUS: Continued.

TC:lp

005710

CASE NUMBER SP89006		SEO Evidence #89-016		INFORM ON REPORT	
AGENCY OREGON STATE POLICE - SALEM		DEPARTMENT OF STATE POLICE SALEM, OREGON 97310		MARION COUNTY D.A.	
1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution-Complainant <input type="checkbox"/> No Prosecution-Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER	
4. Original Report Date 01-18-89, Wednesday	5. Time 12:48AM	6. Written By Kenneth P. Pecyna, Detective	7. This Report - Date 09-18-89	8. Time 10:30 a.m.	9. County Marion
10. Victim or Complainant FRANCKE, JAMES MICHAEL	11. Residence Address 21058 Hazelnut Ridge Road Scotts Mills, OR 97375		12. Res. Phone --	13. Sex M	14. Race W
16. Subject of This Report FOLLOW-UP INVESTIGATION	17. Total Value of Recovered Prop. (Itemize Below)				
18. Details: (Use Additional Plain Sheets as Necessary)					
REFER TO: All reports bearing General Headquarters Case #SP8900672.					
MENTIONED FOR DATA ENTRY: VIERRA-GABLE, JANYNE MARGARET DOB: 11/07/56 9646 Wildwood Drive North Bend, Oregon 97459 Home Phone: 759-4287 Unemployed Description: 5'4", 120 lbs., Hazel eyes, Brown hair (Previously employed State Hospital as an LPN in the Medical Clinic)					
MENTIONED OTHERS: GABLE, FRANK EDWARD DOB: 08/28/59 (Previously identified) GARRIETT, RICHARD DOB: Unknown Unknown address No further description (Crazy Richard) FARRELL, KENNY DOB: Unknown Unknown address (Has been identified) BUCK (Unknown last name) (Has been identified as Busta Buck Burgess)					
Reporting Officer(s) ROBERT W. Sundstrom, Detective		Off. ID Number 1304-27		0005867	
Other Agencies Notified		Date		Time	
APB Numbers and Dates		Method		APB Numbers and Dates	
Approved By [Signature]		Date 09/18/89		SP-77945.247	

VIERRA- J, JANYNE MARGARET DOB: 11/07/56
9646 Willard Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 2

MENTIONED OTHERS:
(Cont.)

CHRIS DOB: Unknown
1255 Cross Street
Salem, Oregon
No further description

FARM, JASON DOB: Unknown
Sunset Villa Apartments #26
Sunset Street
Keizer, Oregon
No further description

GESSNER, MARK DOB: Unknown
Unknown address
(Possibly arrested by Keizer PD and ATF personnel in June 1989)

WALKER, KEVIN DOB: Unknown
Unknown exact address/lives in Corvallis, Oregon
Possible employment for ABC Printers on Oxford Street, Salem, Oregon

DAN (Unknown last name)
Possible address 14th & Cross, Salem, Oregon
(Identified as last name Walsh, Daniel Patrick DOB: 06/06/66)
1469 Hines Street S.
Salem, Oregon
No phone/Unemployed

SHERYLE (Later identified as last name of LOWERY, SHERYLE DOB: 03/29/67)
1469 Hines Street S.
Salem, Oregon
No phone/Unemployed

CORNELL, ROBERT DOB: Unknown
Unknown address (Possibly lodged at OSCI, Salem, Oregon)

DESANTIS, (Possibly Desantos) NICK DOB: Unknown
Unknown address

0005868

VIERRA- J, JANYNE MARGARET DOB: 11/07/56
9646 Wildwood Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 3

MENTIONED OTHER:
(Cont.)

GOSS, DENNIS DOB: Unknown
Unknown address
Previously lived at the intersection of 14th & Hines, on southeast corner of the road

SHELLY (Unknown last name) DOB: Unknown
Unknown address
(Girlfriend of Dennis Goss)

GUST, MARK DOB: Unknown
Unknown address (Possibly lodged in jail in Albany, Oregon)

DR. PAUL SMITH
Located at Kaiser Permanente on Lancaster

DR. J. Swoboda
Located at Kaiser Permanente on Lancaster

JOHN (Unknown last name) DOB: Unknown
Unknown address (Previously lived around 14th Street and Hines intersection)
WMA, 5'8" to 5'9", Sandy blond hair, scruffy looking

KELLEY (Unknown last name) DOB: Unknown
Unknown address (Lived with John somewhere around 14th Street and Hines area)
WFA, 5'4", dark brown hair, short, scruffy looking

SCRITCHFIELD, DOUG DOB: Unknown
Unknown address (Lives on the streets in Salem/Frank Gable met him in Cornerstone Program)

DETECTIVE MARK RANGER - SP Roseburg

GEDEROS, LES DOB: Unknown
9646 Wildwood Drive
North Bend, Oregon
(Frank Gable's foster father)

0005869

VIERRA- 3, JANYNE MARGARET DOB: 11/07/56
9646 Wildwood Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 4

MENTIONED OTHER:
(Cont.)

STUDER, LYNN DOB: Unknown
1245 Waller Street SE
Salem, Oregon
(Mother of Janyne Margaret Vierra-Gable)

GABLE, SYD DOB: Unknown
9646 Wildwood Drive
North Bend, Oregon
Phone: 759-4287

DERUSCHE, JOE DOB: Unknown
9646 Wildwood Drive
North Bend, Oregon
Phone: 759-4287 (Foster child of Les Gederos)

EXHIBITS:

1 - Knife, Sears and Roebuck folding knife, approximately 4" steel blade, brown color handle with brass tips and a brown color leather sheath. (Obtained by Detective Ranger/forwarded to the Springfield Crime Lab by Detective Ranger.)

NARRATIVE:

On January 18, 1989, at 12:48 a.m., security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections' Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

The writer and Detective Ranger were instructed to interview Frank Gable's wife, Janyne Margaret Vierra-Gable.

ACTION TAKEN:

On 9-15-89 and 9-16-89 the writer and Detective Ranger interviewed Janyne Margaret Vierra-Gable at the Coos Bay Patrol Office. A signed statement was obtained from Janyne Margaret Vierra-Gable and is obtained in the writer's notebook.

Due to the length of the interview with Janyne Margaret Vierra-Gable, the statement obtained from her is not in chronological order.

Janyne Margaret Vierra-Gable stated in substance that she first met Frank Gable approximately 5 years ago. They were married on August 26, 1988. Janyne Vierra-Gable stated that Frank Gable began using Crank again sometime in November or December of 1988 and started using heavy around

0005870

VIERRA- E, JANYNE MARGARET DOB: 11/07/56
9646 Willowood Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 5

ACTION TAKEN:
(Cont.)

January of 1989. Janyne Vierra-Gable stated that on the night of 1-17-89 that Frank Gable was not home. Janyne stated she knows this because Frank Gable arrived home just early enough on the morning of 1-18-89 to take her to work. When they arrived at work, she noticed that the area had been roped off by the police. Janyne Vierra-Gable stated that Frank Gable has been very assaultive to her and has broken her wrist, and ribs within the last couple of months. Frank Gable has also cut her leg with a broken dish and also has cut her right elbow with a knife. Janyne states that she believes Frank Gable is very capable of killing someone. Janyne Vierra-Gable states that she does not think that Frank Gable killed Michael Francke but that he definitely does know something about the murder. (Refer to attached signed statement.)

Continued.

CASE STATUS:

RWS:lp

0005871

VIERRA- 3, JANYNE MARGARET DOB:11/07/56
9646 Wildwood Drive
North Bend, Oregon 97459
Home Phone: 759-4287

On September 15th and 16th, 1989, Detective Robert W. Sundstrom and Detective Mark Ranger, Oregon State Police, contacted Janyne Margaret Vierra-Gable at the Oregon State Police Office, Coos Bay, and obtained the following signed statement which is contained in the writer's notebook.

"I'm married to Frank Gable. I first met him about 5 years ago while I was working in the State Hospital in Salem, Building No. 34/the Medical Clinic. At that time Frank was in the Work Release Program through the Corrections Division through O.S.P. Approximately 2 years ago we started living together when he received weekend passes. We got married August 26, 1988. We have no children. I have two children from my first marriage, their names are Bryan Vierra and Eden Vierra. They live with their Dad, Nelson Vierra, in Scotts Mills, Oregon. I have a third child, Jessica Hyer-Vierra. Jessica lives with my sister in Tacoma, Washington, on North Vista Drive, unknown numbers. When Frank and I started living together, he was going through the Cornerstone Program on O.S.H. grounds. We first lived together at 3735 Hawthorne, Salem, Oregon; lived there for approximately 1 year as a couple. I had lived there about 6 months before Frank moved in. We moved from there in approximately February 1989. We moved to Skyview Estates #C on Highway Avenue in Salem, Oregon. We lived there for approximately 1 1/2 months. We were then evicted. I moved to my Mom's house, Lynn Studer, 1245 Waller Street SE, Salem. Frank moved to his foster dad's house, Les Gederos, 9646 Wildwood Drive, North Bend, Oregon. We needed some time apart. I had filed for a restraining order. At approximately the end of May 1989, I moved here to Frank's foster father's house and stayed there with Frank. Living there in this house, 9646 Wildwood Drive, are myself, Frank, Les Gederos, Syd Gable (Frank's brother), Joe Derusche (foster boy of Les Gederos). We separated in April because Frank was assaulting me and him using crank a lot. Regarding the most recent altercations I had with Frank, working backwards are: On September 10, 1989, Frank punched me with a closed fist in the facial area, arms and ribs. He then threw me out of the moving car, going about 40 miles per hour, then slowed, and he held onto my hair. This occurred on the road to the trailer park/Wildwood, Oregon, at about 10:30 a.m. Frank was drunk

0005872

VIERRA- J, JANYNE MARGARET DOB: 11/07/56
9646 Wilmod Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 2

at this time. I don't know if he was using any crank. On 9-3-89 I accidentally broke a candy dish, a collector's plate, which belonged to him. He pushed me into the dresser, which caused a boat propeller that was on the dresser, to fall over and hit the plate onto the floor. He then pushed me onto the bed and I pleaded with him not to do anything to me. He then broke a beer stein I had. I asked him if he felt better that he broke the beer stein. He said, "No," he picked up a piece of the broken plate and leaned over the bed and cut my leg with the broken plate. This was my right leg. He smiled and stated, "This was not an accident" - referring to him cutting me. One of the neighbor's kids went to get his dad. I went to the hospital and got 10 stitches on the inside and 17 or 18 on the outside. I went to Lower Umpqua Hospital in Reedsport. He also broke some ribs. Then on September 3rd, after coming back from the hospital, Frank punched me in the face again and told me I was a cop-calling snitch. That is the worse insult in the world that you can call anyone, according to him. He said this to me because the police had come to the house two times but that Frank hid from them. Then on September 5, 1989, Frank sat on my legs while I was lying in bed, so I shoved him off of the bed. He then accused me of constantly kicking him so he told me that he would make me feel what real pain was. He then punched my stitches, breaking them open. He punched one time. Frank told me that I was trying to start trouble between him and his dad in an attempt to kick him out of the house. I get along fine with Frank's dad. On March 23rd, he broke my arm. Frank has beat me up approximately 15 times since January 1989. This was when Frank was really using crank heavy. He began using crank in November of 1988. Since January 1989 (beginning of January) Frank using crank heavy. He didn't drink that much, an occasional beer. After Frank would beat me up he would say it was the devil in him that makes him do that kind of stuff to me. People who I knew Frank associated with are: (from January to July 1989) Richard Garriett (crazy Richard); Kenny Farrell (close friend), unknown address; Buck, unknown last name, lives on

000587

VIERRA- JANYNE MARGARET DOB:11/07/56
9646 Wil. Jod Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 3

Park Avenue by the Hospital (a van something weird about the van, tan color, older Chevy, and a big car); Chris who lives at 1255 Cross Street in Salem; Jason Farm, Sunset Street which runs parallel to North River Road in Keizer #26 Sunset Villa Apartments, across from Bi-Mart; Mark Gessner, unknown address (raided by Keizer PD and A.P.T.F. in June 1989); Kevin Walker, lives in Corvallis, works for ABC Printers on Oxford Street, Salem; Dan, unknown last name who lives on 14th and Cross, front door faces 14th Street, northeast corner, (Dan is the person who drove me and Frank back to North Bend approximately 6 weeks ago). Dan has a mid-70's Toyota Corolla, dark blue in color. Doug Scritchfield, lives on the streets, met him at Cornerstone; Robert Cornell, presently at OSC; Nick DeSantis, Marion County Jail. Frank thought he was God-like. I don't know why, only that Nick has guns and knives, etc. Shelley, her boyfriend is Dennis Goss; Dennis Goss used to live on the corner of 14th and Hines, southeast corner. Shelley had a 240Z brown in color. Shelley was a crank user. She's the princess. Frank and her would drive around a lot together. Mark Gust, possibly in the Albany Jail. On 1-17-89 I worked at O.S.H. Building 34. I think I worked 6:30 to 3:00 p.m. I may have worked only until noon that day, as I had a doctor's appointment at sometime around that time period. My doctor, Dr. Paul Smith, and Dr. J. Swoboda of Kaiser Permanente. You can check the medical records to see when I was there. Frank would drive me to work and pick me up. Up until the 17th of January Frank would normally meet me 4 to 5 days per week on my lunch break. When he drove me to work on the 18th, we noticed all the cops around. Frank stated, "Fuck." He wanted to know what was going on. He was real nervous, wanted to know how to get out of there. Worried that they might stop him to do a routine check and that he didn't have a license so that they might take him to jail. After that date, he still drove me to work and picked me up or had a friend, Mark Gust, or Chris take me. He didn't come and meet me for lunch for about two weeks. After that I would have to call him and ask him to bring me something to eat. Frank was

0005874

VIERRA-
JANYNE MARGARET DOB:11/07/56
9646 Wilwood Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 4

nervous during this time but I didn't know whether that was due to his drug use or what. On 1-17-89, the evening, I don't recall Frank being home that night. He may have taken me to the doctor then took me home and left. That's if I went to the doctor that day. I know on 1-18-89 he arrived home in time to take me to work. During this time period I was supporting his drug habit. I had nothing left. He traded different items off for crank, such as jewelry, glassware, brassware and whatever money I made at work. In March major confrontations began. He was shooting crank. Frank had quit his job in Salem on November 7, 1988, at Rigid Truss. Frank was concerned about the way he looked. He always wanted to look good. Frank has threatened to kill me a long time ago and I have never until recently really believed him. I really felt hatred coming from him. He told me that he had felt that kind of rage before. Frank would pin me up against the wall, his hand around my neck. He would normally use his right hand. He told me that he would cut me, slice my throat. He has made statements to me, "I know what it's like to watch someone die, someone bleeding, gasping for their last breath of air." This statement I first heard about the early part of April while living on Highway Avenue in the Skyview Estates in Salem. He only made the above statement one time. At the same time he told me that he was involved in a shooting of that cop. I didn't know what he was talking about. He said the cop was dead. I then read in the Statesman-Journal the next day or day after that the cop was in the hospital recovering. He said there was a robbery, remember that robbery. He told me after the polygraph on Wednesday (9-13-89) that he killed the cop, but I told him the cop was not dead. Also on Wednesday (9-13-89) after the polygraph, he started cursing John and Kelly, that's how they found out. John is a white male adult, approximately 5'8"/5'9", sandy blond hair, scruffy looking; Kelly is a white female adult about 5'4", dark brown hair, short, scruffy looking, unknown where they live, somewhere around the 14th Street/Hines Street area. John and Kelley, myself, Kenny Ferrell, Doug Scritchfield, and possibly Chris

0005875

VIERRA- , JANYNE MARGARET DOB:11/07/56
9646 Wil. Jod Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 5

(unknown last name) were present when Frank made the statement that he knew what really happened, referring to the Francke murder. I don't know how the conversation came up. Frank has a fascination with knives. He has no knives now that I know of. The one knife that he does have is in the Property Room of the Marion County Jail. I think he would have had this knife in January. It may have been a gift from Jason Farm. Most of the knives I own are hidden or stored away. Les Gederos hid them. During the time Frank was on crank he had a lot of different knives. He would trade them for crank or give them away. He gave a knife to Dennis Goss that Frank had received from Mark Gessner, it was a weird knife, chrome color handle. This was in early July. The sheath to the knife that's in the Marion County Jail, Frank has in the top drawer of the dresser at his house. About three weeks ago Frank cut me with a knife on the right elbow area, there's a scar with redness about 1 to 1 1/2" long. This occurred when I sat down on the bed. He, unknown to me, was sleeping with a knife. When I sat down he swung at me with the knife causing the injury on my elbow. During the same conversation about him killing the cop, he also stated that he had to leave town to go back to South Dakota to be with his mom and that he had made an agreement with somebody (unknown who) to knock a guy off (unknown who). I didn't know by the way he made that statement if he had already done it or wanted to leave town so he didn't have to do it. Frank had an obsession with guns, especially automatic weapons. Frank would be the middle man on sales. Frank had an AK47, a little .25 automatic, the AK47 I believe was Kevin Walker's who lives in Corvallis. The little .25 auto I think belonged to Gessner. The knife I have I bought in March of 1989 from a guy named Gerald. Frank has since carried this knife around. Frank and I have been here about 5 weeks, since August 7th. A Dan, unknown last name, about 5'10" skinny, long-time crank user, pale skin, curly dark hair, who lives on a corner of 14th Street and Cross, has a girlfriend named Sheryle, Sheryle has two kids and probably one more by now, drove us. Dan drove us here in his car, a

0005876

VIERA-
JANYNE MARGARET DOB:11/07/56
9646 Wil...od Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 6

dark blue 1975-76, mid-70's, Toyota Corolla, with wide tires. Dan has a dragon tatoo on his left forearm. Other knives that I own that are in storage at my mom's house are a throwing knife, double edge blade, 3-4" long, brand name is Cobra. I own that knife from approximately early February 1989. A miniature folding knife with 2" blade I've owned since February 1989, has wood handles with brass tips; a Kershaw knife with a 4" blade, real old, about 40 years old, has brass tips. I've owned that since October of 1987. And two old fishing knives, filet type knives. Frank has two filet fishing knives at Les's, foster dad's house. Frank would not have had access to those knives until April 1989. My mom, Lynn Studer, does not like Frank at all. Frank has told me before that he has hurt people, roughing them up to collect old debts. He said he was a muscle-man for Robert, I think Cornell, possibly in OSCI, and Nick DeSantis. My work hours at the Medical Clinic were 6:30 a.m. to 3:00 p.m. Lunch was from 12:00 to 1:00 p.m. I bought a 1982 Toyota Celica Supra champagne in color, bronze, louvers, power everything, from Skyline Ford on August 20, 1988. It was re-possessed in June of 1989. Frank would always dress nice. He would rotate clothes with his friends. He doesn't own a suit. He had a brown corduroy sport jacket and a black color sport jacket. His hair style is basically the same now as it was then only that it was a little longer on the top and a little longer on the sides. Frank had an overcoat in January described as follows: a gray corduroy/denim on the shoulder pads and on elbows, possibly also on the lining of the pockets, waist length. He gave this coat to Mike Simms. Frank also had at that time a black stone-washed denim trench-coat mid-calf length. This coat, belonged to Kenny Farrell and he gave it back in late January or early February. Frank had tennis shoes size 9. He also had a green Army trench-coat mid-calf length, which he gave to Doug Scritchfield. I think the tennis shoes were Nike's or Rebok's. He had grey penny-loafers, cowboy boots, he gave the boots to a Bruce (unknown last name). Frank also had a pair of Adida's which he had in Cornerstone. Frank had work

0005877

VIERRA-
JANYNE MARGARET DOB: 11/07/56
9646 Wilwood Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 7

boots which had a smoothed-out waffle design. Shelley, Dennis Goss's girlfriend, is 5'5" blond hair, sometimes heavy, sometimes skinny, 120 to 140 lbs., somewhat attractive, used to live at 14th and Hines on the southeast corner. I met Michael Francke one time. I had seen him on the grounds that I remember two other times. I don't know if Frank knew Michael Francke. I know that Frank knew the name and who he was. I met Buck once. He seemed really nice. He lived on Park Street behind the Hospital. He rode around with us one day. About one week after the murder, Frank and I stopped at Buck's house but no one was home. We went back but didn't stop as Frank thought there were a lot of unmarked police cars around. Frank made the statement, "I bet I know why they are there." I asked him why? Frank just snickered. Frank knew Buck from inside the Penitentiary. Frank told me that if anything goes wrong, go to Buck. He will help you out. I have never been in Buck's house. I met Buck after Christmas 1988 but before the Francke murder. Frank had brought Buck to our house at 3755 Hawthorne #44 in Salem. At this time it was really cold in Salem. There was a lot of ice on the ground. We then drove Buck back home on Park Street behind the Hospital. It was a white house, it's been for sale for about 18 years. There at Buck's house was a van, something strange about the van, like it had probably primer spots on it or had different colors on it, it had orange on it. The other car was a pale or tan color, sand color, possibly older Chevy Caprice. I have never met Buck's wife. I think Buck was doing dope running for Frank. I don't know a John Crouse. Frank has never said to me that he killed Francke. He has said that he knows what really happened. He made this statement twice. Once with only me, and the other time in front of other people. These people were identified already (John and Kelly, Kenny Farrell, Doug Scritchfield, and possibly Chris (unknown last name). The first time he said this was when there were these other people around. This was in mid to late February. When he told me alone it was in April. I believe that Frank is capable of killing someone based on his violent tendencies,

0005878

VIERRA- , JANYNE MARGARET DOB:11/07/56
9646 Willamod Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 8

irrational behavior patterns, he seems to be obsessed of killing or hurting at least. He believes that to be something powerful. If Frank didn't kill Francke I think he has knowledge of who did kill Francke/based on things what he said. Since I first met Buck, Frank began to be really obsessed with Buck and what he was doing. Frank made the statement that he knew what really happened, regarding the Francke murder, about two weeks after the murder. (These were in front of the other people who have been previously mentioned.) Frank has mentioned the name of Chris Keerins a lot. Frank has a knife similar to mine which is in custody at the Marion County Jail. In June 1989 Frank was in the Marion County Jail. Chris Keerins was his roommate and Chris was asking him questions about the Francke murder. Frank told me that he told Chris Keerins that he didn't know anything. Frank thought that Chris was a snitch. The knife that Frank cut me with on the elbow, I bought from a guy named Troy, unknown last name, who is a neighbor of Dan, unknown last name, who lives on 14th and Cross Street. I bought this knife the last week of July, first week of August. This knife is a bayonet style blade with a bone handle, folding blade, push-button to open. Mark Gust who may be in the Albany Jail, drove me to work in his '67 red Nova, or used my car during the time period that Frank wouldn't go near the State Hospital. Gust is one of a couple of people who drove me. Frank is real strong. Frank told me sometime during the end of March/early April that he had something to do with the death of someone, then stopped. This statement was made around the same time as the comment about Frank killing a cop. When he starts talking like this, Frank seemed real nervous, appeared distant, paranoid, like a crazed animal. He had been on a four day speed run, so I just passed it off. About the Francke murder, I don't think that Frank killed him, but I do think he knows who did kill Francke. Frank has been real fascinated lately, within the last month, of cutting me up and to beat me up. Beating me up is what happens. When he talks about cutting me up, he gets this real eerie voice, real spooky. He likes for me to be scared.

0005879

VIERRA-(JANYNE MARGARET DOB:11/07/56
9646 Will. rd Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 9

I never told Frank that I saw a teletype that stated that Buck was a suspect. Frank mentioned something about this the other night after he took the polygraph (9-13-89). He got real angry about this. When he came home after the polygraph, he was real tense, stating that he flunked and was waiting for someone to take him back to prison. He said you guys have been looking for just any reason to just roast him and that this was just the perfect reason. He thinks he's going to get the electric chair. Frank had me trim his hair on 9-14-89 so he would look pretty when he went to the electric chair. He has said before that he wanted to kill himself. He said this the day before yesterday (9-13-89). Said he would jump off the bridge. I think that Frank believes that he either killed Francke or that the case against him is so strong that he wouldn't be able to defend himself. After Frank took the polygraph last Wednesday (9-13-89), he came home and he would say, "I know what happened," then he would say he didn't remember what happened. Frank was trying to make me remember that he was at home with me on the night of 1-17-89. I told him that I thought that he was out with Chris, unknown last name, who lives at 12th and Cross Street. Frank seemed really upset over the Francke murder. On that night after the polygraph (9-13-89) he made the statement to me, referring to the Francke murder, that it was just another bullshit robbery. Frank had never suggested this as a reason before. One time Frank would tell me that, "don't you remember I was at home that night?", then the next statement he would say that he didn't remember. Frank told me that he quit work because he couldn't handle the stress. Throughout the day he made statements like he didn't need money on death row. I asked him why he quit his job right after the polygraph and he told me that they are just going to come and get me anyway. Today he just walked around all day in his bathrobe. That's not like him. He didn't even brush his hair today. The evening of the day that Trooper Pileggi called Les's house, I was not at home so a message was left for me to call him back. Frank saw this message. Frank stated to me that if I give the cops

0005880

VIERRA- JANYNE MARGARET DOB:11/07/56
9646 Wil. od Drive
North Bend, Oregon 97459
Home Phone: 759-4287
Page 10

anything to go on, he would kill my ass. This took place about 3 1/2 months ago when we first came to Coos Bay. I didn't know why at that point Frank would say that to me. I didn't even know why Pileggi was calling, so why would Frank be so scared of the phone call. The last week in August, Sergeant Berning called Les's house to set up a polygraph date. Frank spoke with him. Frank later ignored the date. He stated that if they wanted to get me they would have to come out here and get me. They are not going to roast me for something I didn't do. I think Sergeant Berning told him that the polygraph was regarding the Francke investigation. While living in Salem, from approximately January '89 and on, he, Frank, would carry a change of clothes with him. This is when he began doing a lot of running (crank usage). I think that Chris (unknown last name), lives on 1255 Cross Street, would protect him. I don't know about Shelley. Frank's thing is robbing people. Every time that we would have a fight about money, where did he get the money, he would say, "Why did I go to prison for." I am willing to take a polygraph exam. I and Frank had an agreement that we would not sleep together. He was supposed to sleep on the couch, but that only lasted about two days. Our property is very segregated. Frank and I have some items stored at my Mom's house, at 1245 Waller Street SE in Salem in the basement. He would have stored some clothes there."

/s/ Janyne M. Vierra-Gable Time: 2:45 a.m. Date: 9/16/89

000588

E. R. -176

CASE NUMBER SP89001	SPO Evidence #89-016 OREGON STATE POLICE - SALEM 1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance	2. CASE STATUS <input type="checkbox"/> Ctr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution-Complainant <input type="checkbox"/> No Prosecution-Dist. Atty. <input checked="" type="checkbox"/> Extending	3. ORIGINAL SUBJECT OF THIS REPORT MURDER	4. Original Report Date 01-18-89, Wednesday 10. Victim or Complainant FRANKCE, JAMES MICHAEL 16. Subject of This Report FOLLOW-UP INVESTIGATION	5. Time 12:48AM 6. Written By Kenneth P. Pecyna, Detective	7. This Report - Date 09/20/89	8. Time 11:50 a.m.	9. County Marion					
				11. Residence Address 21058 Hazelnut Ridge Road Scotts Mills, OR 97375		12. Res. Phone --		13. Sex M		14. Race W		15. D.O.B. 10-02-46	
				17. Total Value of Recovered Prop. (Itemize Below)									

REFER TO: SUSPECT: MENTIONED FOR DATA ENTRY: EXHIBIT:	All reports bearing General Headquarters Case #SP8900672. GABLE, FRANK EDWARD DOB: 08/28-59 (Not in custody) VIERRA-GABLE, JANYNE M. DOB: 11/07/56 Previously mentioned 1 - Audio cassette tape of statement made by Janyne Margaret Vierra-Gable	NARRATIVE: ACTION TAKEN: CASE STATUS:
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On January 18, 1989, at 12:48 a.m., security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections' Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

Beginning at 11:50 a.m. on 9-20-89, Janyne Margaret Vierra-Gable provided the following statement. The statement was recorded by writer and was concluded at 12:24 p.m.

Continued.

0005882

Reporting Officer(s) Mark Ranget, Detective	Off. No. 1283-37	Date	Time	Method	APB Numbers and Dates	Approved By HN	Date 10-28-89
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Form 77

VIERRA- E, JANYNE MARGARET DOB: 11-07/56
Previosl Mentioned

My name is Mark Ranger. I'm with the State Police. I'm at the Salem Patrol Office with Janyne Margaret Vierra-Gable. The date is September 20, 1989. The time is 11:50 a.m. Janyne Vierra-Gable is going to provide the following statement.

"I'm Janyne Margaret Vierra-Gable. My birth date is 11-07-56. I met Frank at Oregon State Hospital about 5 years ago. He was working there on Work Release from the Penitentiary. In the couple of years that followed he went through programs to make some behavioral changes to deal with his addictions, re-socialization kind of stuff. We went through Cornerstone together and we were married in August of '88 and he didn't start using again until I believe November of '88. By December of '88 he was using heavily; by January of '89 there was starting to be a lot of changes behaviorally; he was staying gone a lot and using quite a bit of crank, and we'd lost about everything by the end of January. I don't know what all. On the night of the 17th, Frank was not home. I'm not sure who he was with; I'm assuming either Chris from across the street or Shelley, who he'd been spending quite a bit of time with. He came home the morning of the 18th in time to pick me up and take me to work. When we got there there was police everywhere and that made him real nervous. He just dropped me off as quick as he could and went out a different driveway. He didn't want to come back to work either for lunches or to bring me to work for a week or so after that. He had friends bring me or I'd take myself to work. We moved from Hawthorne Avenue over to Highway Avenue in either late February or early March. His behavior was becoming progressively worse; he was more and more irritable; staying gone a lot; didn't like being confronted with any of his behaviors. After coming home from a 3 day crank run in March I confronted him with some bills and he got real agitated, pushed me around a little bit and then knocked me down and broke my arm. There were several incidents around that time where he'd get violent with me. During early April we had Jessica taken away from us because Frank was on a crank run and left me stranded somewhere; couldn't get to her. That was when I decided we should separate. He left for a few days. When he came back he was real agitated, pacing around, going through boxes that I had packed ready to move, saying that he didn't know what to do. He had to get out of town; he was going

0005883

VIERRA-1, JANYNE MARGARET DOB: 11-07/56
Previous., Mentioned
Page 2

to go to South Dakota and stay with his mom. He told me that I didn't have any idea of all the things he'd been involved in and he kept saying he needed to leave. Early in this same evening he mentioned that he knew what really happened to Michael Francke. I didn't question that or go into it with him. Later on in the same night, he was still agitated, going through boxes, looking for clothes to take to South Dakota, he repeated that I didn't know what he'd been involved in; he needed to get out of town; he didn't know what else to do; he referred to a cop that got killed and I let him know that I didn't know what he was talking about. He said, "You know, that robbery, the one where the cop got shot." I still didn't know what he was talking about and he just kind of went on rattling about having to leave and having to get out of town and having had made arrangements with people to knock some guy off. Again I didn't know what he was talking about; I thought he was just playing games with me. Then he went back to looking for clothes and pack and he ended up leaving; I'm not sure where he went and didn't come back until the next day. By then he was calmed down and I don't know, he seemed a little more in control of his emotions. I went ahead and moved from Holly Avenue to my mom's house on Waller Street and Frank moved to North Bend to stay with his foster dad. He called me periodically and asked me to come down and I wouldn't. I wasn't ready yet. It took two to three weeks before I moved down there with him. I was there, I don't know, not long, two or three days and got a call from Officer Pileggi, stating that he needed to talk with Frank regarding the Francke case, just to clear up some loose ends. Frank pinned me up against the wall and told me if I said anything to the cops about him that he'd kill me. I didn't think anything of it; I didn't feel that I had anything to hide, so I just shrugged it off. During the next couple of weeks, the violence started up again. We fought over everything. He quit his job or was laid off from a job over there; that seemed to upset him. He thought it was a good idea for me to start writing some checks so we could get some things to sell for money. I don't know, I wrote some checks and then when I decided that was too much I told him I wasn't going to do it anymore. He beat

0005884

VIERRA- 7, JANYNE MARGARET DOB: 11-07/56
Previous Mentioned
Page 3

me up for that and took me downtown to buy a gun with a check. Going back to the night in April when Frank referred to the Francke case and the cop that got shot, during that same night he mentioned that he knew what it was like to see somebody die, to watch them gasping for their last breath of air. Again I ignored that thinking he was trying to lead me into some bizarre conversation. Back to North Bend - after I bought the shotgun for him and he brought that to Salem to sell to one of his friends, during the week while we were in Salem we got arrested for unauthorized use of a motor vehicle. I stayed in jail for a week; Frank stayed in jail for a month. During that month I went back to live with his foster dad. When Frank got out of jail for that he came back to live at Les' and we ended up coming to Salem because we'd made arrangements with Keizer PD. The violence started up again while we were in Salem during June and there were several occasions where I was beaten up; once he was arrested for assaulting me in public; he broke my ribs then. A few days after that he broke more ribs and beat me up because I wouldn't get in a stolen car with him. Things just were getting worse and worse here so we had to report for court August 7th, so I decided to pack everything and go back to North Bend. Things were okay for about a week or so; then Frank started getting more and more agitated and beating on me again; accusing me of being a snitch and calling the cops all the time and trying to make trouble between him and Les, his foster dad. He started doing strange things like sleeping with knives. He has a fascination for knives; always likes to have knives, usually ends up trading them off. One night he was sleeping in bed with a knife and as soon as I sat on the bed to get ready to go to sleep, he came up out of the bed and cut my right elbow with the knife, challenged me to call the cops on him and as I left the room started chasing me and holding me so that I couldn't call the cops; told me I just needed a bandaid and that would take care of it. Les, his foster dad, took the knife away and hid it from him. I kept my knives hidden from him. The next week he got a job and was going to work and staying busy and staying out of trouble and staying calm and then he started up again with these feelings that everybody was against

0005885

VIERRA, JANYNE MARGARET DOB: 11-07/56
Previous. mentioned
Page 4

him and that everybody was calling the cops on him. We had a bad fight one day when he stayed out all night and didn't come home until the next morning. He stayed in bed all that day; I didn't want to confront him; I stayed in the kitchen. About 5:00 o'clock that afternoon he came out of the bedroom; punched me in the chest; told me to stop touching him and his stuff. I wasn't touching him and I stayed away from him as much as I could. I went into the bedroom later and sat down on the bed and the argument started up again. I stood up off the bed. He pushed me into his dresser and that caused something on top of his dresser to break, a plate. I told him it was an accident; told him not to hurt me and so he broke something of mine and then picked up the broken plate and he started laughing he dragged it across my right leg. He started laughing and told me that wasn't an accident. I called his brother Syd in and he called one of the neighbors who's a paramedic and he took me up to the hospital and they put in 28 stitches and I came home that night and he got violent with me again that night, so I left and went down to the neighbor's house. The police arrested him that night, took him to Coquille and then released him and he called Les to come and get him. He got home around 3:30 and he was real verbally abusive but we agreed to stay in separate rooms and to stay away from each other. During that time he'd broken my ribs again and I was sore and tired. Two days later I went into the bedroom to lay down and he thought that it should be me sleeping on the couch instead of him. I told him to just leave me alone. He told me he could be anywhere he wanted to be; it was his house. He sat down on my legs and I tried to get out from under him; I couldn't so I used my left leg and pushed him off my right leg. He landed on the floor on his butt and then he blew up; he stood up. I told him that he was hurting me and he stood up and told me that he'd show me what it felt like to hurt and punched the sutured area on my right leg and all the stitches came open and I had to go back to the hospital. We called Les at the Fire Hall and he came back and got me. All this time Frank was being verbally abusive to anybody he came in contact with, telling everybody they were cop callers and snitches and punks and he

000586

VIERRA, JANYNE MARGARET DOB: 11-07/56
Previous., Mentioned
Page 5

challenged Les but Les just told him to shut up and took me to the hospital and they put in 13 more stitches. When I came home Frank was being quiet and staying out of everybody's way. That was on a Wednesday. The Sunday following that Frank started drinking at 9:00 o'clock in the morning. I didn't know that he'd been drinking. He offered to take me into town and I went with him. When we got into town he dropped the car key and that seemed to make him mad so I got out of the car, got out of his way. I offered to help but he didn't want my help. I got out of his way and was looking at some things at a garage sale and, I don't know, five minutes went by or so and we hadn't spoken to each other but he came up out of the car and punched me in the face in front of all these people and told me to stop calling him a punk and he told me to get back in the car. He drove us home real fast underneath a semi at one point, pulled into the driveway and I told him to let me out and he wouldn't. I had the car door open; he didn't want me to get out so he backed out of the driveway real fast. He hit the side of Les' trailer, broke the door on the car, flying out the driveway, then he pushed me out of the moving car when we got up to the road but he had ahold of my hair; pulled me back in. He threatened to drive us off the bridge. He did eventually turn the car around; take me back home; was real violent; he was pushing me around, hitting me. When I tried to call the cops, he took the phone away from me and hit me with the phone. His brother came out, tried to get him to stop. He and his brother started fighting; then Les came home at that time and stopped that fight. Frank went into town for a while. He apparently fought with everybody in town; came back home and fought with Syd and Les and I again. The cops came and took him away that time. He got home from jail on Tuesday. On Wednesday he had to take a polygraph test. He was real upset about that. He was convinced everybody was snitches and they were trying to roast him. He quit his job that morning. He got up, called in. He told me he didn't need any money on death row and he said that on his way back from jail he hitchhiked back from Coquille to North Bend and he said he stopped on the bridge and was going to throw himself into the ocean but he ended coming home

0005887

VIERRA-2, JANYNE MARGARET DOB: 11-07/56
Previous.y Mentioned
Page 6

anyway. He was convinced if he took the polygraph that they'd roast him. He kept saying that statement. He was convinced that he would not get any defense; he was convinced that they'd have a case so strong against him that he wouldn't get a fair trial; they'd just roast him. He kept saying over and over that he didn't need money where he was going. He had me cut his hair that day; he told me he wanted to look pretty for the electric chair. I told him that they didn't have an electric chair. I don't know, he said something about he wanted to look pretty when they kill him anyway. He was sure that he was going to death row. The next day it was like he was waiting for the cops to come and get him. He kept referring to that; wondering when they were going to come and get him; what was taking so long. He was sure he was going straight to jail, again saying that they're going to roast him and accusing me and everybody around him again of being snitches. He was pacing around the house; he didn't get dressed that day. That's not like him; he wandered around in his bathrobe. He didn't brush his hair or anything. He said there was no point in trying to prove that he didn't have anything to do with Michael Francke because they were going to roast him. He said he could take care of it; all he had to do was just start running when the cops got there and they'd shoot him and that would be the end of that. When the State Police got there to talk to him he was calm and cooperative at that moment; then they took him away. I didn't talk to him until the next day on the phone. Oh, before any of this happened, he kept (the day he took the first polygraph, that afternoon) he speculated that it was just another robbery. He kept trying to get me to remember something that didn't happen. He kept saying, "Remember I was home that night; remember, 'cause I took you to work." But just prior to that he'd told me he didn't know what to do because he couldn't remember, he said it was too long ago and that part of our lives was too confusing. He was using a lot during that time and he couldn't remember but just minutes later he tried to get me to remember something that I knew didn't happen. Then a couple of days later he called me from Coquille and he was still kind of panicky; his thoughts weren't coming easily to him; he was just kind

000588

VIERRA- JANYNE MARGARET DOB: 11-07/56
Previously Mentioned
Page 7

of rambling; one minute sounding real melancholy and resigned to a death sentence, the next minute pleading with me not to divorce him; that he didn't do it. All I could do was just tell him to calm down and if the memory was in there it would come to him. The next day he called me telling me that he remembered and he sounded real elated on the phone. He again talked about a series of events that I remember in about the same sequence but it wasn't during that same time. He's remembering another day. He kept telling me that I should remember because of the people that were involved. I just told him that I couldn't talk to him about it anymore; it was too hard for me to trust him and know if he was telling me the truth. He got agitated then; went from, I love you pleading state, to a calling bitch state; told me I was a liar and a snitch and I told him that if he was going to talk that way I was going to hang up and I did. In this last phone call he said he was with Shelley and he may have been; I don't know, but I'm certainly not going to remember his time spent with Shelley. Oh, going back to January, Frank did have a mid-calf length stone-wash black denim like a trench-coat kind of thing. It belonged to Kenny Ferrell and he borrowed it for a while. He had it for, I don't know, a week or more and then Kenny had asked for it a couple of times and Frank decided to go over there one night. He wouldn't let me go with him to return the jacket. I haven't seen it since then. That would be at the end of January, the last time I saw the coat."

MR: Do you have anything more you want to add?

JVG: Shelley called me the day after Frank tried to get me to remember that he was with Shelley and she told me that she wanted to warn Frank that the cops were raiding all the dope houses in Salem looking for him about that guy that got stabbed and I told her that I didn't know what was going on. She asked me if I thought Frank would do anything like that and I said that I didn't know. She asked me how things were going between us. I let her know that things weren't good; that Frank's been real agitated lately and having some problems. She asked for

0005889

E. R. -184

VIERRA- 3, JANYNE MARGARET DOB: 11-07/56
Previous., Mentioned
Page 8

details and I just told her that I would try to get over to see her sometime. I asked her if she had a phone number where I could call her and she gave me the phone number. I told her that I didn't know what was going on at this time and if she heard anything new, she could call me and visa-versa and that was about the end of the conversation.

MR: Janyne, have you been forced or threatened in any way or coerced to provide this statement?

JVG: No.

MR: And you've given this statement voluntarily?

JVG: Yes.

MR: The time is now 12:24 p.m. and this will be the conclusion of this taped statement.

MR = Mark Ranger, Detective, Oregon State Police

JVG = Janyne Margaret Vierra-Gable

lp

MR:lp

0005890

OREGON STATE POLICE
POLYGRAPH EXAMINATION

Mr. Emil E. Brandaw

Regarding: MURDER INVESTIGATION - FRANCKE, MICHAEL JAMES

Examination requested by: OREGON STATE POLICE - SALEM

Examination conducted at: OREGON STATE POLICE DISTRICT II HEADQUARTERS Date: 12/05/89

Name: CHILDERS, EARL FRANCIS Address: OREGON STATE PENITENTIARY

SS# 530-30-8276 DOB: 03/12/48 POB: RENO, NEVADA Sex: M Race: W

Ht: 5'10-1/2" Wt: 225 Hair: BROWN Eyes: BLUE

Married: NO Name of Spouse:

Occ: Employer:

Medical History: FAIR; HAS HOLE IN CHEST FROM AN OPERATION TO REMOVE A CATHETER; HAS NERVE DAMAGE
IN RIGHT HAND

Education: 15 YEARS OF SCHOOL; HAS AA DEGREE

Criminal History: DRUGS, DRUG TAMPERING (WITH DRUG RECORDS), UUMV

ER: To Oregon State Police Case #8900672.

ISSUE: On January 17, 1989, James Michael Francke was killed at the Dome Building on the Oregon State Hospital grounds.

Information had been developed by investigating officers that possibly Earl Francis Childers had information regarding the Francke homicide.

Childers was a friend of Frank Gable's at the time of the homicide, and Gable apparently told Childers that he (Gable) was responsible for Michael Francke's death. Childers also told the police that he observed Gable leaving the state hospital grounds with his lights out and in a hurry on the night of the murder.

Investigating officers requested a determination as to whether or not Childers statement was in fact true.

PRE-TEST
INTERVIEW:

On December 5, 1989, at 1:20 p.m., this examiner was contacted at the Oregon State Police office in Salem, by Earl Francis Childers.

Childers talked to his attorney on the telephone prior to the polygraph examination.

Writer advised Earl Childers of his constitutional rights from

Form 68

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a prepared form which he acknowledge and signed.

Childers gave this examiner basically the same information that he had given the investigating officers, with no major discrepancies noted.

INSTRUMENTATION:

Earl Francis Childers was examined on a five channel polygraph.

RELEVANT QUESTIONS:

The following are the list of relevant questions used during the Reid General Series Examination given:

1. Did you participate in any way in the death of Michael Francke? No
2. Did you yourself stab Michael Francke? No
3. Did you see Gable stab a man in front of the Dome Building? No

Matte Examination:

1. Did you lie on the statement that you just wrote?
2. Regarding the statement that you just wrote, did you lie about any part of it?

Statement:

In July of 1989, Frank Gable and I were walking over to his house in Keizer. At this time the subject came up about his being in jail for the Michael Francke killing. It was at this time that he told me that he had in fact killed Michael Francke by stabbing him the chest.

On January 17, 1989, while I was walking back from Lancaster Mall, I noticed Frank Gable driving off the state hospital grounds. I yelled and whistled at him, but he did not even seem to see me. A few days later when I asked him about it, he asked me to just forget it, and I did.

Signed: Earl Francis Childers
Dated: December 5, 1989

RESULTS & OPINIONS:

There were no consistent deceptive responses to the above relevant questions in the Reid General Series Examination given, therefore, it is this examiner's opinion that Earl Childers is being truthful in his responses to those relevant questions.

0007052

There were no consistent deceptive responses to relevant questions #1 and #2 in the Matte Examination given, therefore, it is this examiner's opinion that Earl Childers is being truthful in his responses to those relevant questions regarding his statement.

Fredrick E. Ackom

340-21 Fredrick E. Ackom, Detective
Polygraph Examiner

FEA:lbd

c: Oregon State Police
Oregon State Police - Sergeant Nelson
Marion County District Attorney's Office - Sarah Moore

Tape received 12/05/89 and typed 12/06/89

0007053

OREGON STATE POLICE

POLYGRAPH EXAMINATION

Mr. Emil E. Brandaw, Superintendent

Regarding: Murder - Francke, James Michael GHQ# 8900672

Examination requested by: Sergeant Karl Nelson, Oregon State Police, Salem

Examination conducted at: Oregon State Police, Salem, Oregon Date: January 20, 1990

Name: HARDEN, CAPPIE CLIFFORD Address: Marion County Jail, Salem, Oregon

SS# 526-19-7466 DOB: 09-15-56 POB: Hillsboro Sex: Male Race: Cauc.

Ht: 5'10 1/2" Wt: 155 Hair: Brown Eyes: Hazel

Married: No Name of Spouse: _____

Occ: Operating Engineer Employer: _____

Medical History: Fair; Heart - good; Lungs - good; Smokes, no respiratory problems

Education: Tenth grade; Last School Attended - Carl Harden High School

Criminal History: Sales of Narcotics

FER: To General Headquarters case #8900672.

ISSUE: On 01-18-89, at 12:48 a.m., security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

The investigating officers believed that Cappie Clifford Harden had participated in the death of Mr. Francke by being a lookout and possibly driving the get-away car. Cappie Harden also is a very good friend of another eyewitness, Jodie Mae Swearingen. Investigating officers desired a determination as to whether or not Cappie Harden had participated in the stabbing of Michael Francke on January 17, 1989.

0007137

PRE-TEST

INTERVIEW: On January 20, 1990, at 7:00 p.m., this examiner was contacted at the Oregon State Police Office in Salem by Cappie Clifford Harden. At this time, this examiner advised Mr. Harden of his constitutional rights from a prepared form, which he acknowledged and signed. Cappie Harden gave this examiner, basically, the same information that he'd given the investigating officers, with no major discrepancies noted, which included: he had no participation in the stabbing death of Michael Francke in front of the Dome Building on January 17, 1989. Harden further related that he really didn't really know Frank Gable, that he'd only met him once or twice.

Form 68

HARDEN, CAPPIE CLIFFORD
POLYGRAPH EXAMINATION
PAGE #2

EXAMINATION:

Cappie Clifford Harden was examined on a five-channel instrument.

RELEVANT

QUESTIONS: The following is a list of questions of the Reid General Series Examination given:

1. Did you participant in any way in the stabbing of Michael Francke?

Answer: No

2. Did you yourself stab Michael Francke?

Answer: No

3. Were you on the Dome Building grounds when Michael Francke was killed?

Answer: No

4. On the night of the murder, did you go to the State Hospital grounds with Gable?

Answer: No

RESULTS AND
OPINIONS:

There were strong consistent deceptive responses to the participation relevant question #1 and relevant question #4, efficient enough to draw a conclusive opinion as to Cappie Harden's deceptiveness to those relevant questions. Relevant question #2 and #3, there was inconsistent deceptive responses; therefore, those questions are being deemed inconclusive. Upon conclusion of the examination, the writer confronted Cappie Harden about his deceptiveness to the relevant questions-participation in going to the Dome Building grounds with Gable. Harden began to cry openly, stating, "Hey, dude, you're really scaring me." Writer immediately got Sergeant John Salle and Detective Bill Pierce to further interview Cappie Harden.

Fredrick E. Ackom
340-21 Fredrick E. Ackom, Detective

FEA:dlf
cc: Francke Task Force
Sgt. Nelson

0007139

OREGON STATE POLICE
POLYGRAPH EXAMINATION

Mr. Emil E. Brandaw

Regarding: MURDER INVESTIGATION (FRANCKE, JAMES MICHAEL)

Examination requested by: OREGON STATE POLICE - SALEM

Examination conducted at: OREGON STATE POLICE DISTRICT II HEADQUARTERS Date: 11/07/89

Name: SWEARINGEN, JODY MAE Address: c/o HILLCREST SCHOOL, SALEM, OREGON

SS# NOT OBTAINED DOB: 05/15/72 POB: NOT OBTAINED Sex: F Race: W

Ht: 5'4" Wt: 100 Hair: BROWN Eyes: BROWN

Married: SINGLE Name of Spouse:

Occ: Employer:

Medical History: STATES FAIR; LUNGS AND HEART GOOD; TO HAVE HERNIA OPERATION; HAS BLADDER INFECTION; ON TYLENOL #3 AND ADVIL.

Education: COMPLETED 7TH GRADE

Criminal History: THEFT

FER: To Oregon State Police Case #8900672.

ISSUE: On January 17, 1989, James Michael Francke was killed at the Dome Building on the Oregon State Hospital grounds. Information had been developed by investigating officers that Jody Swearingen had information regarding that murder.

On her initial interview, Swearingen related to the detectives that she was present when Gable had been talking about the Michael Francke murder, and made the comment "I can't believe I did it."

Jody Swearingen was scheduled for a polygraph examination at the State Police office in McMinnville at 1:00 p.m., on September 29, 1989, however, she did not show up for that test. Swearingen (a juvenile) was on the run, and not apprehended until October 16, 1989, and was subsequently placed at Hillcrest School in Salem where she now remains.

Jody's family retained the services of private attorney Tom Collins. Deputy District Attorney Sarah Moore, began negotiating with Mr. Collins to ascertain if writer could polygraph Swearingen to see if she was in fact an eye witness to the Francke murder, or simply obtained information from other people regarding the murder.

0007282

Form 68

POLYGRAPH EXAMINATION
GE TWO
SWEARINGEN, JODY MAE

On November 2, 1989, Mr. Collins agreed to allow writer to view some polygraph charts on Swearingen at private polygraph examiner Ken Simmon's office in Portland.

At 7:10 p.m., on November 2, 1989, writer, accompanied by Detective Lynn Fredrickson, contacted private polygraph examiner Ken Simmons, private attorney Tom Collins, and his associate, at Simmon's office in Portland. Writer looked at the charts which Simmon's was calling inconclusive; due to Swearingen not being a very good test subject at that time, and what he determined were some inconsistencies in the polygraph charts.

On November 7, 1989, Attorney Tom Collins agreed to allow writer to polygraph Swearingen on the issue of whether or not she was at the crime scene and witnessed Frank Gable stab Michael Francke. Part of the agreement was that Collins be present during the test, and that polygraph examiner Ken Simmons and himself take part in the question formulation.

PRE-TEST
INTERVIEW:

At 3:25 p.m., on November 7, 1989, writer met with Jody Swearingen and her attorney Tom Collins, at the Salem Patrol office. Writer advised Swearingen of her constitutional rights from the prepared form which she acknowledged and signed in the presence of her attorney, Tom Collins.

The pre-test interview with Ms. Swearingen went well, and in writer's opinion she was a good test subject at that time. Swearingen was very cooperative and did not appear to use any physical or mental countermeasures in order to distort the polygraph charts. Swearingen did a good job of concentrating and focusing on the test. Writer did not ask Swearingen any questions outside the scope of the test. At one point Swearingen began to talk about other issues, and writer promptly reminded her that her attorney had admonished her not to.

EXAMINATION: Jody Mae Swearingen was examined on a five-channel instrument.

RELEVANT
QUESTIONS:

The following are the list of relevant questions used during the General Series Examination given:

1. Did you see Gable stab a man in front of the Dome Building? Yes
2. Were you present on the state hospital grounds when Michael Francke was killed? Yes

0007283

POLYGRAPH EXAMINATION
PAGE THREE
SWEARINGEN, JODY MAE

3. Did you lie about Gable stabbing a man in front of the Dome Building? No

The following is a list of relevant questions used during the Matte Polygraph Examination given:

1. Did you lie in the statement you just wrote? No
2. Regarding the statement you just wrote, did you lie about any part of it? No

The statement that Jody Swearingen wrote is as follows:

"I was on the Dome Building grounds, and saw Frank Gable stab Michael Francke."

Signed: Jody Swearingen
11/07/89

It should be noted that Jody Swearingen initially wrote in her statement - "I was walking on the Dome Building grounds when Michael Francke was stabbed by Frank Gable."

Signed: Jody Swearingen
11/07/89

This statement did not address whether or not she saw Frank Gable stab Michael Francke, therefore, her statement was changed upon the approval of her attorney, Tom Collins, to the aforementioned statement.

RESULTS &
OPINIONS:

There were inconsistent responses to relevant question #1, therefore, that question was deemed inconclusive. There were no consistent deceptive responses to relevant questions #2 and #3 in the General Series Examination, therefore, it is this examiner's opinion that Jody Swearingen is being truthful in her responses to those relevant questions.

In the Matte Examination given, there were no consistent deceptive responses to either of the two relevant questions concerning her statement, therefore, it is this examiner's opinion that Jody Swearingen is being truthful in her responses to those relevant questions. It is the writer's opinion based on the results of this examination, that

0007284

POLYGRAPH EXAMINATION
7E FOUR
ZARINGEN, JODY MAE

Swearingen was present and saw Frank Gable stab a man in front
of the Dome Building on the state hospital grounds.

Fredrick E. Ackom
340-21 Fredrick E. Ackom, Polygraph Examiner

FWA:lbd

c: Oregon State Police - Salem
Oregon State Police - Sergeant Nelson ✓
Marion County District Attorney's Office - Sarah Moore
Attorney Tom Collins

0007285

Salem Statesman

Journal Jan 25, 1989

Oregonian leads car club

He says no makers must help dealers. Page 30 Business

Philomath beats Jetter

Complete results of high school basketball game

Statesman-Journal

Film
CK

Salem, Oregon

January 25, 1989

Police describe Francke killer

Authorities seek dark-haired man seen near scene

By Dan Postrel
of the Statesman-Journal

Investigators released a sketchy description Tuesday of a dark-haired man suspected of fatally stabbing Oregon's top corrections official, Michael Francke, last week.

District Attorney Dale Penn of Marion County said the man was seen running from a

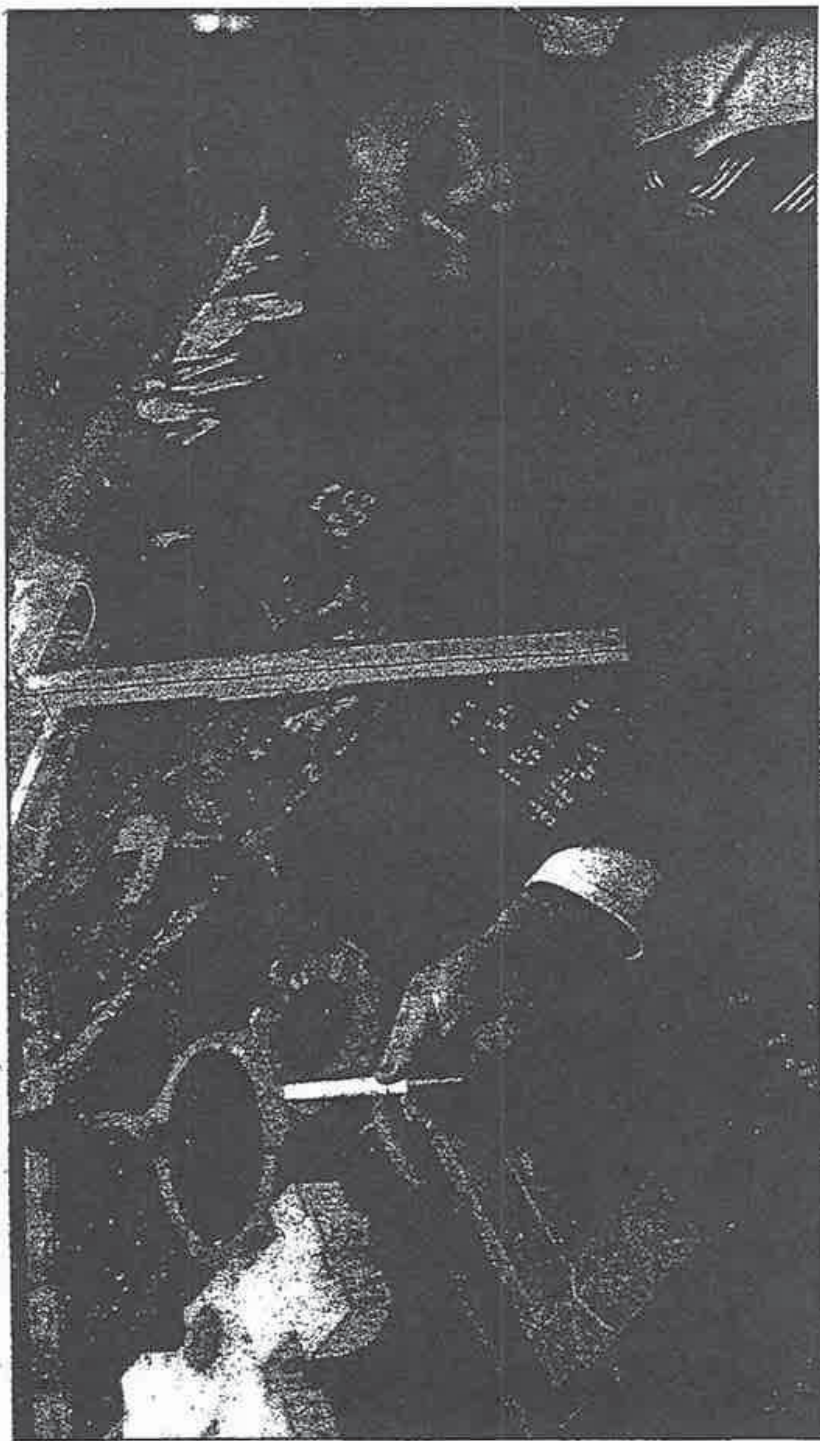
Department of Corrections parking lot about 7 p.m. Jan. 17, the time of the attack on Francke.

"It is our estimation, based on the investigation, that this individual is responsible for the killing of Michael Francke," Penn said.

The man was described as wearing dark pants and a light-colored coat that extended below his waist. Penn said the investigators weren't sure of the man's race, although witnesses said he did not appear to be black.

Penn said police were not close

Turn to **Francke**, Page 2A.



Statesman-Journal photo by Gerry Law

Dale Penn, the Marion County district attorney, shows on an aerial map the possible route of a suspect in Michael Francke's

killing. A man wearing dark pants and a light coat was seen running west shortly after the time of the attack.

operation of the fund.

A major focus has been programs for teen parents because they are in a high-risk group of potential child abusers, Hartley said.

"A lot is used to help young

the \$25 charged for the keepsake, \$13 goes to the trust fund.

Gifts to the Children's Trust Fund should be directed to Marge Goldschmidt, in care of the Governor's Office, State Capitol, Salem, Ore. 97310.

islative session.

He currently is a member of the Governor's Task Force on Corrections Planning and chairman of the state Prison Siting Authority.

Boof
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tion.

Salem Statesman
Journal Jan 25, 1989

The Corrections Department will pay \$4,000 a month.

Francke

Continued from Page 1A.

to making an arrest and did not have a specific person identified as the suspect.

Investigators have kept a tight lid on information in the case. They said they were releasing the description and possible escape route of a suspect in hopes of prompting more calls from the public.

Although they have some additional details, investigators kept the suspect's description general in an effort to produce as many tips from the public as possible, Penn said.

"We don't want people to exclude calling in because they saw somebody who didn't exactly match," he said.

Other police officials said a composite drawing may be released later.

Penn refused to say whether anyone had actually witnessed the attack or seen the assailant's face.

He said police used statements from several people, as well as physical evidence, in assembling the description.

Penn would not discuss the physical evidence. But he said a typical police technique involves painstaking examination of the victim's body and the crime scene in search of blood, hair, clothing fibers, or other traces of the killer.

Penn said Francke, 42, was attacked near his car, which was parked in a lot in front of his office building, known as the Dome Building, on the state hospital grounds at 2575 Center St. NE.

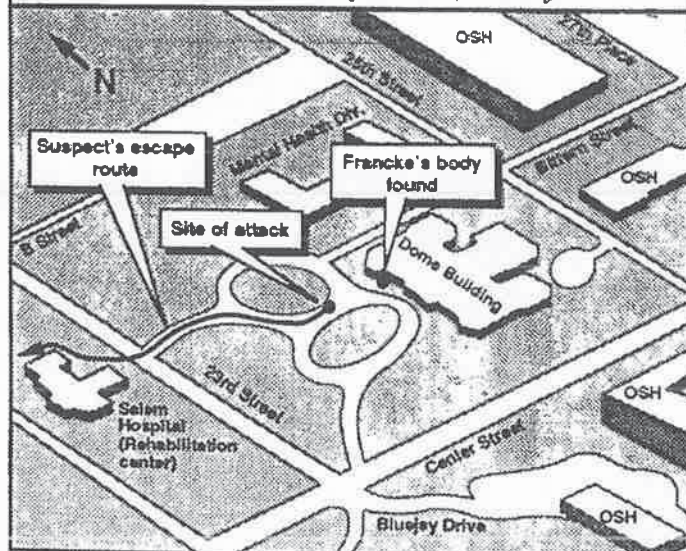
The suspect ran west down a driveway and across 23rd Street NE, vanishing in a secluded parking lot on the north side of a building owned by Salem Hospital, Penn said.

The route covers about 175 yards, a distance that a man on the run could cover in 25 seconds or less.

A security worker found Francke's body near an entrance to his office building, about 25 yards from the attack site, at 12:45 a.m. Jan. 18. An autopsy showed that he died from a stab wound to

Francke murder suspect seen leaving area

Buildings labeled OSH are Oregon State Hospital buildings.



Investigators have asked that anyone with information about Michael Francke's killing call the state police at 378-2576 or 1-800-452-7888. Police said Tuesday that they were especially interested in locating a dark-haired man, clad in dark pants and a light-colored coat, who was seen fleeing the crime scene.

The investigative force is divided into teams, including one that is seeking clues among current and former state prison inmates.

Other teams are checking Francke's personal and professional associates, state hospital patients who may have been on leave, and any possible connections with other crimes reported in the area recently, Renfrow said.

Penn said detectives have concentrated their efforts on leads in Oregon.

However, as time goes by, more emphasis may be placed on other states, including New Mexico, where Francke worked in the criminal justice system for about 11 years before coming to Oregon in 1987, he said.

Detectives still are interviewing people who may have seen the fleeing man on the night of the homicide. That effort includes door-to-door sweeps of surrounding neighborhoods.

Steve McKinney, who lives on Center Street NE, said an officer visited him last week, asking whether he had seen a man matching the description released Tuesday.

He said the detective also described the suspect as wearing a trench coat and having hair of about collar length.

Another neighbor, Richard Culkin, said, "They came by today, asking if we'd seen anybody strange walking around."

Both McKinney and Culkin said they told officers that they hadn't seen such a person.

Penn said detectives were continuing to interview people who were working late in state or Salem Hospital buildings near the crime scene.

the heart.

The parking lot where the suspect last was seen was the object of intense searches a week ago.

Investigators used metal detectors to look for evidence in and around shrubs in the area. They sifted through the contents of a large trash bin.

They also borrowed a Salem Hospital maintenance worker's ladder to check the roofs of several buildings.

However, investigators have said that no murder weapon was found.

So far, police have focused on the neighborhood west of the Salem Hospital.

However, Penn said, authorities also want residents of neighborhoods to the south, east and north to try to recall seeing any such person around the time of the slaying.

He said the assailant may have abruptly changed direction after he last was seen.

Police have no information

about any vehicle that may have been involved or about whether others helped the attacker escape, Penn said.

Previous police requests for help from the public in the case produced about 150 calls, many of which have been helpful, he said.

Authorities continued Tuesday to withhold many details of the attack, including whether Francke had been robbed and how many times and in what places he had been stabbed.

"We know the wounds, and the murderer knows the wounds," Penn said.

He said the investigation continues to focus on robbery and revenge as the prime motives.

Maj. Dean Renfrow of the state police said about 20 officers from his agency are assigned to the case. Aiding them are three investigators from the state attorney general's office and two officers each from the Marion County Sheriff Department and the Salem Police Department.

State police interview patients

Questioning may aid Francke case

By Theresa Novak
Of the Statesman-Journal

Investigators are interviewing state hospital patients in hopes of learning more about a man seen running from the parking lot where state corrections director Michael Francke was stabbed to death last week.

George Bachik, the Oregon State Hospital superintendent, said nine state police investigators

were working at the mental hospital, questioning patients.

How to help

Investigators have asked that anyone with information about Michael Francke's killing call the state police at 378-2575 or 1-800-452-7888.

legues during that time," he said Wednesday.

"My guess is probably less than 10 out of 700 had grounds privileges for that night."

Patient confidentiality laws usually prohibit release of such information.

Bachik said five patients were returning from an Alcoholics Anonymous meeting between 6 and 8 p.m. Jan. 17 when they saw a man running from the parking area near the Dome Building at 2573 Center St. NE.

Francke was stabbed about 7 p.m., according to District Attorney Dale Penn of Marion County. Francke's body was discovered about 12:45 a.m. Jan. 18 on a porch of the Dome Building.

The building, which is the headquarters of the Department of Corrections, is on the hospital grounds.

Penn said people other than the patients also reported seeing the fleeing man, but he declined to be specific.

At a press conference Tuesday, Penn described the man as dark-

Turn to **Francke**, Page 2A.

Pro and con of Spa

Salem Statesman
Journal Jan 26, 1989

Wayne Henninger is the manager and

Many say Sp Salem neighbors cite

**By Janet Davies
and Christine Decker**
Of the Statesman-Journal

Roger Fischer, a neighbor of Sparkles, Salem's topless-dancing tavern, is worried about the safety of his four daughters.

Customers who view topless dancing in the tavern at 920 Commercial St. SE "are coming out into the neighborhood after being under sexual stimulation of some form," Fischer said Wednesday.

"It's an unhealthy situation. I don't think it belongs in a residential area."

Fischer appeared before a hearings examiner, Cheryl Ho, who will recommend to the Oregon Liquor Control Commission whether the tavern's license should be canceled. Ho is expected to her recommendation to the commission in 60 days.

Susan Cain
A to Z Renta

AP photo
Services Committee about his

hearings for several Cabinet appointees.

Among them was Defense Secretary-designate John Tower. He said reform was needed at the Pentagon, and he pledged to work with Congress to achieve it.

closing bill

project national winners so early encourages some voters from casting the said.

It just a West Coast issue — it's an issue," she said. "The last thing we want people to feel their vote doesn't

said it would be challenging to get passed, but "It has the best chance of passing it's ever had."

Officials in the West have complained that early projections by television have caused lower turnouts that affected the outcomes of close local

Government panel faults Agent Orange study

WASHINGTON — A government panel on Wednesday dismissed as flawed a study that concluded Vietnam veterans suffered post-war physical problems due to exposure to the herbicide Agent Orange.

The American Legion study was reviewed for Congress by a panel of the Department of Health and Human Service's Domestic Policy Council.

The study, released last November, contradicted other studies by the Veterans Administration and the federal Centers for Disease Control. Their studies have found no significant health differences among veterans of the Vietnam era, regardless of whether they actually served in Southeast Asia.

Agent Orange was a powerful mixture sprayed in Vietnam from 1962 to 1971 to kill vegetation. The spraying stopped after studies indicated that dioxin, one of its ingredients, caused cancer.

the level of a year earlier.

But the decrease was a shift in the payment of Social Security checks.

The Treasury Department reported receiving \$93.8 billion in revenues last month, an increase of 9.7 percent from the same period a year earlier. Spending, meanwhile, declined 4.1 percent from December 1987 to \$105.4 billion.

Carlucci joins the board of defense contractor

WASHINGTON — Westinghouse Electric Corp. said it elected Frank C. Carlucci, former defense secretary, to its board of directors Wednesday.

Westinghouse, based in Pittsburgh, is a major defense contractor. About 20 percent of its annual sales of nearly \$11 billion come from business with the Pentagon.

Carlucci, 58, left government service Friday with the inauguration of George Bush and immediately became vice chairman of the Carlyle Group, Washington-based takeover specialists.

— From wire reports

Francke

Continued from Page 1A.

haired, wearing dark pants and a light-colored coat that extended below the waist.

Penn said investigators think that the man attacked Francke in a parking lot near the Dome Building, stabbing him in the heart and inflicting other injuries that Penn has refused to discuss.

The man then ran west across 23rd Street NE and continued onto the paved parking area next to the Physical Medical and Rehabilitation Center, which is part of the state hospital, Penn said.

Mortally wounded, Francke staggered to a porch, where he attempted to get into an office by breaking a glass pane on a French door. However, he collapsed outside, where his body was discovered about 4½ hours after the stabbing.

vered about 4½ hours after the stabbing.

Penn has refused to release the exact time of death.

"We don't want the murderer to know what Michael Francke left for us about his murderer in those last few minutes," he said.

The description released Tuesday was a general one because no one got a good look at the face of the fleeing man, Sgt. Art Bobrowitz, a state police spokesman, said.

After the description was broadcast, 15 people called in with tips Tuesday afternoon, compared with five Monday afternoon, Bobrowitz said.

Penn said teams of investigators are working to sift through the tips. Though some have been useful, some are improbable.

"Some of them are like a guy who said he saw a man with a .38 pointing it at Francke, who was kneeling, and, well, that isn't very useful," he said.

Francke, 42, had been a judge and corrections official in New Mexico. Penn said investigators — focusing on robbery and revenge as possible motives — have been in contact with New Mexico officials but have not sent detectives there.

Penn, who had been receiving twice-daily briefings on the Francke homicide from a team of 25 investigators, said he has turned over that duty to Sarah Moore, a deputy district attorney.

"I'll still be involved, but we need someone who will be immersed in it," he said.

Salem Statesman
Journal Jan 26, 1989

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David Ruder, Exchange Commission chairman, warned the commission that tampering could create another

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Report: U.S. half its oil sales

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Investigators said more tips since they received a partial release running from

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Mattson Inc., a construction firm filed a lawsuit in Mahoning County court in jail construction project that had not submitted a bid. The lawyer for the firm, the low bidder, the constitutional

Page 1A.
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Let's hear neighbors

Petitioner's Ex

tion program, he said the county failed to protect against convicted criminals and women in a past. In the county, he said the county

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What are the good things you see as you stroll down, take a stroll, street?

How is your neighborhood?

Let us know, as you are happening in Salem.

Send your comments to:

Neighborhoods
City Desk
Statesman-Journal

Exhibit D

If you want to help

And the man also may have been in the time of the attack on Francke.

ing call the state police at
270-2575 or 1-800-452-7888.

lot across 23rd Street NE and onto the parking area next to the Physical

Continued from Page 106

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Continued from Page 1A.

- Area resident: Ann Sample said those who want to avoid the traffic by riding a bicycle or walking face another problem: crime.
- "You need to feel safe if you're going to be out on a bike or on the street," she said.

- Robert Little, 75, said the growth of the Capitol Mall is turning the nearby neighborhood into a business complex.
- "It's tearing the neighborhood up," Little, who has lived on Summit for 50 years, said.

Exhibitor's Exhibit D
Page 20

the state's affirmative action goals.

In view of the court rulings, however, officials said that devising a new minority-contracting program that would be both effective and legal could be exceedingly difficult.

At stake are millions of dollars in government construction projects that could be tapped by some of the 700 or so firms owned by minorities and women across the state.

The court rulings have crippled efforts aimed at involving more of those firms in state construction projects. Lina Garcia Seabold of the state Office of Minority and Women Business said, "They're very discouraging, very sad," she said. "We're trying to do the best we can under the circumstances. But we're very concerned that the strides that have been made will be derailed or stopped."

While state officials lamented the court rulings as a setback, they said they would continue to work on the problem.

Turn to **Minorities**, Page 2A.



Statesman-Journal photo by Bruce Thorne
Jacqueline Zimmer (lower right) is trying to organize neighbors to work together to get crime and drug dealers out of the neighborhood. Zimmer holds her daughter, Jasmine, 2. Ellen Schmidt-Devlin (upper right) holds her daughter, Kaitlyn, 15 months. Erin Devlin, 3, is at left.

Salem residents fear downtown intrusion

By Leah Lorber
of the Statesman-Journal

The problems of a growing business and government district are reaching down the quiet, tree-lined streets of central Salem's older neighborhoods.

Residents say that crime, traffic congestion and new construction are threatening the character of the area, where trimmed hedges and mowed lawns frame homes dating back nearly a century.

"This neighborhood is still in its prime," Glenn McCormick, 66, of 715 Capitol St. NE, said. "Concrete, steel and glass have replaced neighborhoods that took years to build up."

About 15 residents of four North Salem neighborhoods talked about the problems Thursday night with their City Council representative, Sharon Gray.

Tim Greyhovens, the chairman of Northeast Neighbors, said before the meeting that a parking garage for Turn to **Neighborhood**, Page 2A.

Francke's kin doubt robbery motive; police won't rule it out

From staff and wire reports

District Attorney Dale Penn of Marion County refused Thursday to rule out robbery as a motive in the slaying of Michael Francke despite relatives' statements that no personal belongings were missing.

"I respect the opinion of the family and relatives," Penn said. "However, robbery has not been excluded, and we still consider it a viable motive."

Francke, the director of the state Department of Corrections, was stabbed to death Jan. 17 in a parking area outside his office. Penn said that robbery and revenge are considered the primary motives.

Francke's brother, Patrick Francke Jr. of Kansas City, Mo., said that police appear to have recovered all of Francke's personal effects, including a wallet, credit cards and car keys.

"I personally don't believe it was a robbery," he said.

The attack occurred on a Tuesday night, he said, indicating that the killer was familiar with his brother's work habits.

"Michael's schedule was such that on any day but Tuesday, he could be anywhere in the state. Every Tuesday he had his director's meetings. Somebody had to know that, in my opinion."

Officers group offers \$1,000 reward

Page 2A

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

FRANK E. GABLE,)	No. 07-CV-00413-AC
)	
Petitioner)	Affidavit of David C. Raskin, Ph.D.
)	
vs.)	
)	
MAX WILLIAMS,)	
)	
Respondent)	
_____)	

I, David C. Raskin, Ph.D., being duly sworn, depose and state as follows:

I received my Ph.D. degree in psychology from the University of California, Los Angeles in 1963. I specialized in experimental psychology, human psychophysiology, quantitative methods, and statistical analysis. I have served on the faculties of UCLA, Michigan State University, the University of British Columbia, and the University of Utah, where I presently hold the rank of Professor Emeritus of Psychology. For 50 years, I have conducted and published scientific research in human psychophysiology. For 44 years, I have conducted laboratory and field research on polygraph techniques for the detection of deception, taught university and applied courses about polygraph techniques, trained government and law enforcement polygraph examiners, and published extensively on polygraph techniques. I have served as an expert witness in approximately 250 criminal and civil cases in federal and state courts in the United States, Canada, and Sweden. A copy of my Curriculum Vitae is attached as Exhibit A, which accurately provides a list of my education, training, publications, presentations, employment history, and appearances as an expert witness.

I have conducted more than 1,100 polygraph examinations in criminal cases, and I provide professional consultations and evaluations of polygraph examinations all over the United States. I was trained and certified in field polygraph testing techniques at the Backster School of Lie Detection in New York City in 1973. The Backster School of Lie Detection is an American Polygraph Association accredited institution for the training of polygraph examiners. I am also a trained and experienced interrogator, having worked on more than 1,500 criminal cases. I have received training in the Reid interrogation technique and other methods for interrogating suspects and obtaining confessions, and I have employed these techniques in cases on which I have worked.

I have provided instruction, workshops, and consultations for the United States Government, including the Department of Defense National Center for Credibility Assessment, Secret Service, the Federal Bureau of Investigation, Drug Enforcement Administration, Customs and Border Protection, Department of Energy, Central

Intelligence Agency, Department of Homeland Security, Department of State, Department of Justice, Department of the Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Air Force, Army Intelligence, Federal Reserve System. I have also provided testimony and consultations to the US Senate Committees on Watergate, Judiciary, Armed Services, and Labor and Human Resources. I have also provided expert testimony, consultations, and training to foreign governments and courts, including Canada, China, Colombia, Indonesia, Israel, Korea, Mexico, Norway, Sweden, and the United Kingdom. I have also performed expert evaluations and training for state and local law enforcement agencies all over the United States and Canada.

At the request of Nell Brown of the Office of the Federal Public Defender in Portland, Oregon, I reviewed and analyzed documents concerning the investigation, prosecution, and conviction of Frank E. Gable (Gable) for the January 1989 murder of James Michael Francke (Francke). My understanding is that the investigation began to focus on Gable in Fall of 1989 and that Gable was indicted in April 1990 and convicted in Summer 1991. I was asked to draw upon my knowledge of psychology, interrogation techniques, and polygraph to evaluate the interrogations, particularly, the use of polygraphs of individuals who became the key witnesses against Gable at trial.

Documents Reviewed

In performing my evaluation, I reviewed the polygraph examination reports of Frank Gable, Janyne Gable, John Crouse, and each of the eight material witnesses: Jodie Swearingen, Cappie "Shorty" Harden, Earl Childers, Mark Gesner, John Kevin Walker, Dan Walsh, Randy Studer, and Michael Keerins. I also reviewed summaries of the evidence presented at trial, the statements material witnesses made to law enforcement, and each of the polygraphs administered during the course of the investigation into the Francke murder. Finally, I reviewed affidavits of John Bender, Kelly Bender, Jodie Swearingen, and Shelli Thomas regarding the law enforcement interrogation tactics employed in this case, as well as an excerpt from a post-trial interview of material witness John Kevin Walker in which he discussed the use of polygraph by the law enforcement in this case.

General Principles of Polygraph Testing

Polygraph techniques are based on scientific research and development. The attached book chapters describe the generally accepted protocols and procedures for the construction, administration, and interpretation of valid polygraph tests.¹ Adherence to such methods and techniques is essential for obtaining valid polygraph results on which investigators and prosecutors may rely for charging and prosecution.

Below, I outline the scientifically-accepted protocols for the construction, administration, and interpretation of polygraph tests that are relevant to the tests conducted in this case.

In practice, virtually all polygraph instruments used for psychophysiological credibility assessment record measures from at least three physiological systems that are controlled by the autonomic nervous system. Recordings are usually made of palmar sweating (commonly known as the galvanic skin response or the electrodermal response), relative blood pressure (obtained from an inflated cuff on the upper arm), and respiration (obtained from volumetric sensors placed around the chest and/or abdomen). Many field polygraph instruments also make measurements of peripheral vasomotor activity and monitor the subject's movements.

The basis of polygraphy or psychophysiological credibility assessment is a scientific theory that can be and has been tested with the methods of science. Any conscious effort at deception by a rational individual causes involuntary and uncontrollable physiological responses through the autonomic nervous system that may include measurable reactions in blood pressure, peripheral pulse-amplitude, breathing and electrodermal response.

The most commonly used techniques for the psychophysiological detection of deception are comparison question tests (CQT). The theory of these comparison question tests is as follows: The CQT assesses a person's credibility by looking for a differential reaction between two types of questions. The first type of question is known as a relevant question. Relevant questions are direct accusatory questions that address the issue under investigation (e.g., Did you shoot John Doe?). The second type of question, comparison questions, are ambiguous questions to which the examiner maneuvers the subject to elicit a "No" answer (e.g., Before 2010, did you ever do anything that was dishonest, illegal or immoral?). Some versions of the CQT direct the subject to answer comparison questions with a lie.

The rationale of the comparison question test predicts that guilty subjects will produce larger physiological responses to the relevant questions to which they know they

¹ See the attached book chapters: Raskin, D. C. & Kircher, J. C., Validity of Polygraph Techniques and Decision Methods, pp. 63-129, in D. C. Raskin, C. R. Honts, & J. C. Kircher (Eds.), *Credibility Assessment: Scientific Research and Applications* (San Diego, CA, Elsevier/Academic Press, 2014); and Raskin, D. C., & Honts, C. R., The Comparison Question Test, pp. 1-48, in Kleiner, M. (Ed.), *Handbook of Polygraph Testing* (San Diego, CA, Academic Press, 2002).

are deceptive, than to the relatively unimportant comparison questions. Innocent subjects are expected to produce larger physiological responses to the comparison questions, to which they are assumed to be either deceptive or uncertain of the veracity of their answer, than to the truthfully answered relevant questions.

Validity of The Types of Polygraph Tests Administered in This Case

Most of the polygraph examinations described in the reports I reviewed in this case employed test protocols that have been shown to be invalid and/or not approved by the American Polygraph Association and the Federal Government. Conclusions based on such tests cannot be considered reliable. The following invalid test protocols were employed in the tests in this case:

- The Yes-No protocol where the examinee answered the same question twice, one time “Yes” and the other time “No.” This is known as the Positive Control Technique. The only published scientific study indicates that it is not a valid test.²
- The Statement Verification protocol where the examinee made a statement and was tested on the truthfulness of the statement. This technique is not recognized as valid by the American Polygraph Association and is not taught by the Federal Government.
- The Reid General Series protocol or Relevant-Irrelevant Test, which includes only relevant and irrelevant questions. There are no comparison questions. In their extensive review of polygraph techniques, Raskin and Honts concluded, “The RIT suffers from fundamental flaws in internal, face, and criterion validity, along with lack of standardization of pretest interviews, question sequencing, and procedures for evaluating the test outcome. Thus, the RIT does not satisfy the basic requirements of a psychophysiological test and should not be used.”³
- The Peak-of-Tension test where the examinee is asked a question and presented with a series of alternative answers. The examiner tries to determine the correct alternative by looking for the item with strongest polygraph reaction. While forms of this test known as the “Guilty-knowledge” or “Concealed-information” test may be valid, this test may be used only to investigate whether the examinee possesses knowledge or information that is available only to the investigators and a guilty or involved suspect. This type of test cannot be used as a “silver bullet” for seeking new information and or determining collateral details unknown to the investigators.
- The Matte Quadri-Zone Comparison Test is a variant of the CQT. Although Matte claims to have produced validation studies, the American Polygraph Association concluded, “studies supporting them proved to have more unresolved

² Driscoll, L.N., Honts, C.R., and Jones, D., The Validity of the Positive Control Physiological Detection of Deception Technique, *Journal of Police Science and Administration*, 15, pp. 46-50 (1987).

³ Raskin and Honts, 2002, see above.

methodological issues than others included in this meta-analysis.⁴ Thus, it is not considered by the American Polygraph Association to be a valid technique.

Proper Administration of the Polygraph Examinations Used In This Case

In addition to the use of invalid test protocols generally, my review also identified serious problems with the administration of the polygraph examinations. The following are fundamental requirements for the administration of valid polygraph tests as relevant to this case.

- A polygraph should not be conducted if the subject has been interrogated that day, including if the subject is interrogated during the pre-test. Doing so increases the risk of error.
- If an examiner confronts the examinee and accuses the examinee of lying, the examiner is no longer acting as an objective professional, but rather as an adversary. This tends to make examinees believe they are not being treated fairly, which increases the risk of error. A different examiner should conduct any additional testing.
- The more a person is tested, the less reliable are the results of the repeated testing.
- Repeated testing of the same individual combined with confrontations and interrogations increases the risk that the person will provide a statement that the person feels the examiner wants to hear, even if it is not accurate.

Ignoring the above procedures not only risks erroneous results in terms of the outcome of any polygraph examinations, but it also may lead to other undesired outcomes such as (1) examinees providing false statements that the examinee believes the examiner wants to hear, and (2) investigators developing confirmation bias or “tunnel vision” that can further the production of false statements by witnesses and derail the objectivity of the investigation. This is especially so in cases, such as this, where polygraph examinations were used in conjunction with confrontational interrogation techniques that presumed the person to be guilty or deceptive. To fully understand this phenomenon, it is important to understand the commonly-used interrogation method employed in the investigation of this case and the known problems of false confessions and admissions associated with such methods.

Risks of Common Interrogation Techniques

Modern American law enforcement interrogation is, by definition, a guilt-presumptive and confrontational process. Over the past half century, the investigative interview technique most commonly used by American law enforcement involves some

⁴ Meta-Analytic Survey of Criterion Accuracy of Validated Polygraph Techniques, *Polygraph*, 40, pp. 194-305 (2011).

form of the Reid technique, which clearly appears to have been used in this case. The goal of this interrogation technique is to weaken the subject's resistance by increasing the anxiety associated with denial and reducing the anxiety associated with confession.⁵

Interrogators isolate the subject, usually in a police interrogation room, and confront the subject with an accusatory approach and a strong presumption of guilt. Interrogators are trained to interrupt the subject, prevent or stop any denials of guilt and communicate that resistance to confession is futile. To accomplish this, interrogators are trained to employ the following techniques: (1) minimization, which involves suggesting that the acts were accidental or do not carry significant consequences; (2) maximization, which may involve presenting false evidence to increase the subject's concern that there is substantial the evidence against him (e.g., confronting a subject with a purported polygraph test failure or telling the subject he has been identified by eyewitnesses) or suggesting the consequences are more significant than they really are; and (3) offering leniency, some type of benefit, or a deal.

The following core principles of psychology are relevant to the thought processes of an interrogation subject. People are inherently social beings, highly vulnerable to influence from change agents who seek their compliance. Behavior is influenced more by perceptions of short-term than long-term consequences, leading people to make decisions they think will maximize their well-being given the constraints they face (i.e., making the best of the situation they are in). Once people see an outcome as inevitable, cognitive and motivational forces promote their acceptance of and compliance with the outcome. Finally, memory is transient and susceptible to suggestion and bias.⁶

There are two sets of risk factors for producing false evidence that are associated with interrogations. The first set of risk factors pertains to the circumstances of the interrogation. The second pertains to characteristics of the subject that renders him or her vulnerable to influence.⁷

First, misleading or coercive interrogative techniques increase the likelihood of eliciting false information from a subject. This includes situational factors, including duration of the interrogation, isolation of the subject, sleep deprivation, or other need states. It also includes tactics, such as the presentation of false evidence, other forms of trickery designed to link the suspect to the crime and lead him or her to feel trapped by the evidence, and minimization tactics that lead the suspect and others to infer leniency even in the absence of an explicit promise.

Kassin et al. provided an example that is relevant here:

⁵ See Ofshe, R. J. & Leo, R. A., *The Decision to Confess Falsely: Rational Choice and Irrational Action*, Denver Univ. L. Rev., 74, pp. 979-1122 (1997b) (describing the decision-making process).

⁶ Kassin, S. M., Drizen, S. A., Grisso, T., Gudjonsson, G. H., Redlich, A. D., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 Law Hum. Behav., 2010, at, pp. 15-16 (hereinafter Kassin, et al., 2010).

⁷ Kassin, et al., 2010, pp. 19-25.

“Concerns about the polygraph are illustrative in this regard. Although it is best known for its use as a lie-detector test, and has value as an investigative tool, posttest “failure” feedback is often used to pressure suspects and can prompt false confessions. This problem is so common that Lykken (1998) coined the term ‘fourth degree’ to describe the tactic (p. 235), and the National Research Council Committee to Review the Scientific Evidence on the Polygraph (2003) warned of the risk of polygraph-induced false confessions.”⁸

Second, certain personality traits, immaturity, and cognitive or intellectual impairments have been found to render certain people particularly susceptible to interrogation. For example, research in developmental psychology and neuroscience shows that “immaturity manifests in impulsive decision making, decreased ability to consider long-term consequences, engagement in risky behaviors, and increased susceptibility to negative influences.”⁹

Investigator bias also may contribute to the likelihood of eliciting false information and prevent follow-up investigation. The psychological phenomenon of “cognitive bias,” the way that our beliefs, hopes, and desires influence what we perceive and how we reason and behave, explains how well-intentioned police officers can adopt tunnel vision that causes misplaced focus on an innocent suspect. Brandon Garrett, who conducted a study of the first 250 DNA exonerations to assess what errors commonly lead to false convictions, explained how cognitive bias may impact criminal cases:

“Police may see themselves as doing justice by only investigating the guilty. The result can be ‘tunnel vision’ or confirmation bias. Once people form a belief, they tend to adhere to it and look for evidence that fits, or confirms, their preconceived idea. When police form a hunch that a suspect is guilty, they may then without realizing it discount any evidence that does not jibe with their prior belief in the suspect’s guilt.”¹⁰

The guilt-presumptive interrogation process also may result in contamination error. Contamination often occurs inadvertently or unconsciously, for example, through repeated interrogation, taking the subject to the crime scene, asking leading questions, inadvertently giving cues when a subject hits upon a correct answer, correcting the subject, or mistakenly stating non-public facts.

Unfortunately, studies show that people, including jurors and judges, cannot readily distinguish between true and false confessions and that law enforcement experience does not improve performance. The latter is not surprising because the behavioral cues that law enforcement has traditionally focused on to discern deception (gaze aversion, postural

⁸ Kassin, et al., 2010, p. 17.

⁹ Kassin, et al., 2010, p. 19.

¹⁰ Garrett, Brandon, Convicting the Innocent, at p. 266.

cues and grooming gestures) “are not statistically correlated with truth-telling or deception.”¹¹

Since it is difficult to distinguish between true and false confessions or admissions, it is important for investigators to corroborate all confessions or admissions, irrespective of whether coercive techniques were used. It is also important for interrogators to guard against investigator bias, as this has been shown to increase the strength of tactics used on the subject, including those that are known to lead disproportionately to false confessions or admissions.

Three types of false confessions have been identified by researchers: voluntary, compliant, and internalized (or persuaded) confessions.¹² Voluntary false confessions occur when innocent people claim responsibility for a crime they did not commit without prompting or pressure from police. This has occurred in high profile cases. Reasons for such confessions may include a desire for notoriety, a conscious or unconscious need for self-punishment, an inability to distinguish between fact and fantasy, or a desire to protect the actual perpetrator. Coerced compliant confessions occur when the suspect acquiesces to the demand for a confession to escape a stressful situation, avoid punishment, or gain a promised or implied reward.”¹³ “This type of confession is an act of mere public compliance by a suspect who knows that he or she is innocent but bows to social pressure, often coming to believe that the short-term benefits of confession relative to denial outweigh the long term costs.”¹⁴ Finally, an internalized false confession occurs where, through interrogation, an innocent but malleable suspect, who is told there is incontrovertible evidence of his involvement, comes to doubt his own memory and believe he may have actually committed the crime.

False confession studies demonstrate that innocent people falsely implicate themselves in serious crimes despite concerns of self-preservation. The same risk factors that produce false confessions also can be expected to result in subjects falsely implicating another person, particularly where benefits to the subject will inure, as barriers to implicating someone else are considerably lower than barriers to implicating oneself.

With respect to “many documented false confessions, the statements ultimately presented in court contained not only an admission of guilt but vivid details about the crime, the scene, and the victim that became known to the innocent suspect through leading questions, photographs, visits to the crime scene, and other secondhand sources invisible to the naïve observer.”¹⁵ The reality is, however, that the “confession is scripted by the police theory of the case, rehearsed during hours of unrecorded questioning,

¹¹ Kassin, et al., 2010, pp. 24-25). In fact, there are no nonverbal or verbal cues unique to lying. (Hartwig & Bond 2011; DePaulo 2003; Elkman 1985). Nervous behaviors long have been misinterpreted as signs of deception. (Elkman 1985).

¹² Kassin et al., 2010, p. 14 (citing Kassin & Wrightsman, 1985; Gudjonsson, 2003; Inbau et al. 2001, McCann, 1998, Ofshe & Leo, 1997a, 1997b).

¹³ Kassin et al., 2010, p. 14.

¹⁴ Kassin et al., 2010, p. 14.

¹⁵ Kassin, et al., 2010, p. 25 (citing Kassin, 2006)).

directed by the questioner, and ultimately enacted on paper, tape, or camera by the suspect.”¹⁶

Confessions are viewed as powerful evidence of guilt. “Research on the impact of confessions throughout the criminal justice system is unequivocal. Mock jury studies have shown that confessions have a more powerful impact than other potent forms of evidence and that people do not fully discount confessions, even when they are judged to be coerced and even when the confessions are presented secondhand by an informant who is motivated to lie.”¹⁷

Application of These Principles To This Case

Polygraph testing began two days after the murder of Francke. During this investigation, at least 74 individuals were administered polygraph tests between 19 January 1989 through 19 April 1990. The total number of polygraph tests was approximately 100, which is an exceptionally large number of tests conducted in the investigation of a single crime. In the early stages of the investigation, other suspects were eliminated sometimes based on polygraph. Johnny Lee Crouse, who confessed to the murder, was polygraphed by an FBI examiner who deemed his confession truthful. For unknown reasons, he was eliminated as a suspect. Investigators eventually focused on Gable and several of his acquaintances who would later become the “material” witnesses against him at trial. Each of these individuals (with the exception of Jodie Swearingen) initially denied knowledge of or involvement in the murder. Many of these individuals were subjected to multiple polygraph tests combined with extensive confrontations and interrogations. The vast majority of tests of the witnesses who eventually testified against Gable at trial were conducted by only one polygraph examiner, Detective Frederick E. Ackom.

I applied the generally-accepted requirements for conducting and interpreting proper and accurate polygraph examinations in my analysis of the examiners’ reports of the polygraph testing conducted in this investigation. My review of the reports of these examinations revealed serious problems as described below.

1. Scientifically-accepted polygraph procedures required numerical scoring in 1989-1990, which was when the police conducted the polygraphs in this case. Computer analysis did not become available until 1991. The polygraph reports in this case present conclusions without providing any formal scoring of the polygraph charts. Numerical scoring was mentioned in only one report, the basis for the conclusions was not described other than by statements of being truthful or deceptive to individual questions or “the examiner feels” that the examinee was truthful or deceptive. Such subjective interpretations are not acceptable and have been shown to produce unacceptable error rates.¹⁸

¹⁶ Kassin, et al., 2010, p. 25

¹⁷ Kassin, et al., 2010, p. 24 (citing Kassin & Neumann, 1997, Kassin & Wrightsman, 1980, and Neuschatz, Lawson, Swanner, Meissner, & Neuschatz, 2008).

¹⁸ In fact, the conclusory reports do not comply with best practices in several respects. For example, the reports do not include descriptions of the test protocols, complete

2. I have been informed that the polygraph charts and data were sought by the defense in discovery, but this discovery request was denied. Without reviewing the underlying raw data, I am unable assess whether the tests were accurately scored or whether the conclusions were correct. Nevertheless, from the information contained in the conclusory reports that I have reviewed, it is clear that the polygraph examinations in this case did not conform to proper, scientifically-accepted protocols. The failure to follow proper, scientifically-accepted protocols in the construction, administration and interpretation of polygraph leads to erroneous results.
3. The construction of the tests did not conform to proper protocols.
 - a. For example, the tests involved improper questions and question formats, as well as testing protocols that have not been validated and are not generally accepted by the APA.
 - b. In almost all of the polygraph tests in this case, the examiner improperly drew conclusions about the examinee's truthfulness or deceptiveness as to individual questions on the test. This is not an acceptable procedure. An examinee is either truthful or deceptive to the entire test, but no conclusions may be drawn regarding the individual questions. To do so stretches polygraph beyond its limits and is a product of invalidly constructed polygraph tests. The scientific literature indicates that in a properly-conducted test, conclusions about overall truthfulness or deception are generally accurate, but one cannot make specific conclusions on each of the separate questions.
 - c. For example, a single test in this case would include relevant questions concerning participating in the killing of Francke, actually stabbing Francke, planning to kill Francke, and knowing who killed Francke. One cannot rely on the conclusion that the examinee was truthful on the question of stabbing Francke and deceptive on the question of being present at the scene of the murder. Nevertheless, the examiners in this case drew conclusions about truth and deception on each of the different questions. However, the examinee is either deceptive or truthful to the entire test. The test does not measure with reasonable accuracy to which question or questions examinee lied or told the truth. This was repeatedly violated on virtually all of the tests.
4. The administration of the tests also violated proper protocols. Some examinees were tested despite not being suitable for testing due to their physical or mental state.

question lists, or the basis for the examiner's conclusions. As noted above, numerical scoring was omitted (with the exception of one report) and no polygraph charts were provided. No video or audio recording of the examinations of interrogations was made.

- a. For example, Frank Gable was not a suitable subject for his polygraph tests. His first test was administered by Detective Dennis Fox on 13 September 1989 when Gable was recuperating from a series of fights the preceding weekend, wherein he suffered extensive bruising, possible broken ribs, a black eye, and had been using drugs and drinking heavily. He was reluctant to take the polygraph test but said he was doing so because he was told by his probation officer that if he did not take the polygraph examination he was going to get violated and sent to the penitentiary. This is an example of the coercion that was used to get suspects and witnesses to agree to a polygraph test, even though they were not physically suitable for a test.
 - b. After a particularly extensive pretest interview, Gable was tested and found deceptive about stabbing and killing Francke. He was told that was deceptive on the test, and his "behavior, demeanor, and attitude were all discussed with him." He agreed to take another test, but the examiner correctly concluded, "it would not have been polygraphically [sic] possible to re-polygraph Mr. Gable at this time due to the confrontation at the end of the polygraph examination." This appears to have been the only time when an examiner correctly declined to perform a retest because of the examiner's "confrontation" during the examination. In contrast, Detective Ackom performed all but a few of the 100 examinations during this investigation, and he repeatedly violated this principle that was properly stated by Detective Fox.
 - c. Gable was retested by Ackom on 15 September 1989. He was extremely distraught, crying, and assumed a fetal position prior to the test. He was found deceptive in denying that he stabbed Francke. The examination lasted 3-1/2 hours. It is noteworthy that the only admissions Gable made during the extensive post-test interrogation were to the control questions about matters unrelated to the investigation.
5. Administration of the examinations was also improper in another way. It was the regular practice for law enforcement in this case to alternate between interrogation, polygraph testing, confronting examinees with purported false results, re-interrogating, and re-testing. For example, witnesses were heavily interrogated prior to their polygraph tests, administered more than one test in the same session, and retested on one or more occasions. Following their initial test, examinees were typically "confronted" by the examiner, interrogated by the examiner, interrogated by an investigator, retested on the same day, and often subjected to the same process on one or more subsequent days. After failing a test, such individuals are more likely to provide a statement that is what the person feels the examiner wants to hear even if it is not accurate. Via this process, some examinees were provided information obtained from other witnesses and suspects; numerous witnesses were administered multiple tests in a single day and over the course of several days;¹⁹

¹⁹ Each of the material witnesses was polygraphed multiple times in a single day or multiple times over the course of several days. Swearingen was polygraphed twice in one day on 6 different occasions and three times in single day on a separate occasion. In fact,

and the fundamental requirement that once an examiner confronts the examinee and accuses the examinee of lying, that examiner should not conduct further polygraph examinations was violated in all but a few tests conduct in this case. As noted above, a single polygraph examiner, Fred Ackom, conducted 52 of 55 polygraph examinations of the material witnesses.

6. Examples of these highly flawed practices abound in this case:

- a. Jodie Swearingen was administered multiple polygraphs on at least 7 different days. On numerous occasions, she was “confronted” with supposed deceptive responses and changed her story to conform to the supposed result of the polygraph. For example, over the course of 4 days (January 16-19, 1990), Swearingen was interviewed at least 3 times and polygraphed at least 9 times. She was then “confronted” by the examiner, Fred Ackom, who told her that she was lying and that he “knew” the truth about certain facts – such as when and how she arrived in Salem on the day of the murder and that she was at the Dome Building. These “known” facts appear to have resulted from Ackom’s reliance on flawed polygraphs. First, Ackom stated that an earlier “confirmatory [polygraph] test showed that the subject [Swearingen] was, in fact, an eye witness to the murder.” Even putting aside that the test was invalid, it is unethical for an examiner to state that a confirmatory polygraph test establishes a fact. Second, Ackom’s belief in how and when Swearingen arrived in Salem were based on two Peak of Tension tests that were used as if they were so-called “silver bullets” that could establish the truth of collateral details. No competent examiner would rely on the accuracy of such tests. Despite her earlier statements to the contrary, Swearingen eventually adopted Ackom’s version of these events. Further polygraphs and interviews with Swearingen appeared to have been directed at conforming the details of her statements to match those being elicited from Cappie Harden.
- b. A similar process occurred with Gesner, Harden, Studer, Walker, and Walsh. Gesner denied any knowledge about the Francke murder or that Gable had confessed to him during his first two polygraphs, although he was willing to implicate Gable in a burglary. After Ackom “confronted” Gesner with polygraph results suggesting Gesner was at the scene of the crime and participated directly in killing Francke, Gesner changed his story and claimed that Gable had confessed to him. Gesner continued to deny any other involvement in the murder. However, Ackom polygraphed him again and then confronted him about being deceptive regarding helping Gable dispose of evidence. Gesner then stated that he had verbally told Gable how to

during one stretch of time, Swearingen was polygraphed 10 times in 5 days. On two other occasions, she was polygraphed 3 times over the course of 2 days. Gesner and Studer were each polygraphed three times in a single day. Walsh, Childers, Keerins, and Harden were each polygraphed twice in a single day, and, at one point, Harden was polygraphed 4 times over the course of 5 days.

dispose of clothing and a gun, but did not participate directly. At some point after another polygraph and another confrontation by Ackom, Gesner changed his story and said that Gable had given him a bag of evidence which Gesner threw off a bridge into the Willamette River. After two more polygraphs, Gesner provided the statement which would eventually be his trial testimony.

- c. Harden also originally denied any knowledge of the murder. He stated that he had only met Gable twice, with the first time being after 17 January 1989. After being arrest on two separate charges, Harden was again interviewed in January 1990 and claimed Swearingen had told him that she witnessed John Bender and Gable commit the murder. Harden was polygraphed by Ackom and then confronted about supposed deception regarding Harden's own involvement in the murder (importantly, at this point in the interrogation process of Swearingen, her story was that Harden had driven her and Gable to the Dome Building). Harden at that point began crying, stated that "you're really scaring me," and then implicated Gable. Contrary to Swearingen's statement, however, Harden claimed he had not driven Gable to the scene but was later called there by Swearingen and was merely an eyewitness to the crime (Swearingen would adopt this version of events after she was polygraphed at least two more times).
- d. Studer also originally denied any knowledge of Francke's murder and stated that Gable had not confessed to him. He was polygraphed and then confronted by Ackom as being deceptive regarding the issue of whether Gable confessed to him. Studer maintained that Gable had not done so, and pointed out that he "hated" Gable and had no reason to hide anything that would implicate Gable. After another polygraph exam and another confrontation by Ackom, Studer stated that although Gable had not confessed, a man named Doug Scritchfield had confessed to him and claimed that Gable had participated in the murder. After four more polygraphs and at least two confrontations by Ackom, Studer apparently stated that Gable had confessed to him the morning after Francke's murder.
- e. Walker similarly denied any knowledge of Francke's murder or that Gable had confessed to him but, after a polygraph and confrontation by Ackom on supposedly deceptive answers, Walker stated that Gable had talked about taking a "dude" out. After another polygraph and confrontation about deception, Walker stated that Gable had told him after the Francke murder that Gable had been "paid for taking dude man out of the picture" and that Gable used the word "corrections" in relation to the person he had killed. After a final round of polygraphs and confrontations about deceptions, Walker stated that he had sold Gable a gun prior to 17 January 1989 that was supposed to be the "backup" weapon during the murder.
- f. Daniel Walsh also changed his statement after being polygraphed and confronted by Ackom. He eventually stated that "he guessed" Gable had used the name "Michael Francke" in discussing a planned murder in 1988,

and that Gable specifically confessed to him in the summer after the murder. After another polygraph and confrontation, Walsh stated that Gable had shown him a knife in mid-1989 that Gable claimed was the murder weapon.

- g. Michael Keerins was first examined by Detective Hauser on his statements that Gable had told him that he had stabbed Francke. Hauser drew mutually contradictory conclusions. He found him deceptive on the question "While in the Marion County Jail, did Gable tell you he stabbed Michael Francke?," inconclusive on the question "Did Gable tell you he stabbed Michael Francke?," but truthful on the question "Are you being truthful about Gable telling you he stabbed Michael Francke?" He then conducted a statement verification test and concluded that he was truthful in stating that he fought and stabbed Francke. This set of conclusions relied on the inappropriate scoring of individual relevant questions and an invalid statement verification test.
- 7. My review also indicates that many examinees were threatened with adverse consequences or given promises of immunity from prosecution or favorable treatment if they "cooperated" by providing statements desired by the polygraph examiner and investigators. When combined with being told that they failed the polygraph test, the accuracy of the resulting statements is highly suspect.
- 8. For example, prior to trial several examinees, including material witness Jodie Swearingen and Shelley Thomas and John and Kelly Bender, described the interrogation procedures they were subjected to thus:
 - a. Intensely interrogated, pressured, coerced, and frightened by the angry and sometimes violent behavior of the interrogators.
 - b. Police pressure and insistence that they confirm allegations and statements made by others
 - c. Threatened with new charges, including murder and perjury charges.
 - d. One examinee explained that if she did not "say what they want, they will get me for perjury and throw me in jail for five to twenty years."
 - e. Another was told, "Get on the bus now; or stand on the curb with Frank, and you can go down with him."
 - f. Threatened with jail and the loss of one's children. For example, threatened that police would "throw me in jail and take away my baby."
 - g. Swearingen said she was told by one officer that "his job was on the line" and "If this test doesn't come out right, I'll flush you down the toilet like a fucking turd."
 - h. During interrogation not allowed to use the toilet.

- i. Police statements that Gable was a snitch for the police.
 - j. Swearing was brought to testify at a mock grand jury and told "Your story has to jive with Shorty's and the Grand Jury has to believe it." She said she had to repeatedly go over her story "what seemed like 60 times."
 - k. Given immunity
 - l. Offered benefits and leniency
9. The problems of being interrogated repeatedly before and after the polygraph examinations and structural examination errors stemming from the use of invalid and improperly constructed tests infected the polygraphs of all the material witnesses in this case, as follows:
- a. Earl Childers was given 2 polygraphs exams: 1 Reid and 1 Matte. As explained above, these formats have not been validated. Furthermore, the examiner improperly drew conclusions as to each relevant question on each of the Reid and Matte examinations administered to Childers. The Matte examination used the invalid "statement verification" format.
 - b. Mark Gesner was given 7 polygraph exams: 4 Reid, 2 Matte, and 1 Peak of Tension. These tests did not comply with generally accepted protocols for the following reasons. On each of the Reid and Matte tests, the examiner improperly drew conclusions as to each relevant question. One of the two Matte exams used the invalid "statement verification" format. The Peak of Tension exam did not conform to the accepted "guilty-knowledge" format.
 - c. Cappie Harden was given a total of 7 tests in 6 sessions. On each of the 4 Reid and 3 Matte examinations administered to Harden, the examiner improperly drew conclusions as to each relevant question. Additionally, one of the Matte examination used the invalid "statement verification" format.
 - d. Michael Keerins was given 4 polygraph examinations: 2 Reid and 2 Statement Verification tests. These tests did not comply with generally accepted protocols because on each examination the examiner improperly drew conclusions as to each relevant question. Furthermore, the first examination was conducted by Detective Hauser, who drew mutually contradictory conclusions about Gable having told him he stabbed Francke. Moreover, two of the examinations used the invalid "statement verification" format.
 - e. Randy Studer was given 8 polygraph examinations: 4 Reid, 3 Matte, and 1 Peak of Tension. These tests did not comply with generally accepted protocols. On each of the Reid and Matte examinations, the examiner improperly drew conclusions as to each relevant question. Additionally, one of the Reid examinations incorporated the invalid "Yes/No" questioning

format and one of the Matte examinations used the invalid “statement verification” format. The sole Peak of Tension examination did not conform to the accepted “guilty-knowledge” format.

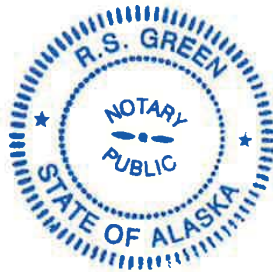
- f. Jodie Swearingen was given 23 polygraph tests in 12 sessions. I have never seen this many tests administered to one person in the 43 years I have been working in this field. On all 8 Reid examinations and all 7 Matte examinations administered to Swearingen, the examiner improperly drew conclusions as to each relevant question. Four of the 7 Matte examinations administered to Swearingen used the invalid “statement verification” format. The Peak of Tension examinations administered to Swearingen did not conform to the accepted “guilty-knowledge” format. In fact, many of the tests of Swearingen were designed to seek information requested by investigators and the prosecutor about collateral details. That is an unacceptable method that used the polygraph as if it were a so-called “silver bullet.” Any competent examiner knows that one cannot rely on the results of such tests.
 - g. John Kevin Walker was given 4 polygraph examinations: 2 Reid, 1 Matte, and 1 Peak of Tension. These tests did not comply with generally accepted protocols. On each of the Reid and Matte examinations, the examiner improperly drew conclusions as to each relevant question. The Matte examination used the invalid “statement verification” format. The Peak of Tension exam did not conform to the accepted “guilty-knowledge” format.
 - h. Daniel Walsh was given 3 polygraph examinations: 1 Reid and 2 Matte. These tests did not comply with generally accepted protocols for the following reasons. On the Reid and Matte examinations, the examiner improperly drew conclusions as to each relevant question. Additionally, the Matte exams both used the invalid “statement verification” format.
10. The foregoing includes samples of the various types of serious problems inherent in the ways in which polygraphs were misused in this investigation. Although there are many other examples that I have not described, I have tried to illustrate the main problems.


Conclusions

It is abundantly clear that the polygraph testing procedures conducted in this investigation were fundamentally and seriously flawed. These problems were greatly exacerbated by investigators coercing examinees to create false statements by providing information to examinees regarding what they wanted them to state, telling them that they were lying when they were actually truthful by not giving the desired responses, abusive and frightening interrogations, serious threats of prosecution and prison, threats concerning their children and families, promises of rewards, and actual rewards. As a result, the unethical and flawed polygraph testing procedures combined with improper and coercive interrogations appear to have provided the means to shape their statements in order to obtain false testimony from the examinees. The techniques used in this case


David C. Raskin, Ph.D

SUBSCRIBED, SWORN, AND ACKNOWLEDGED before me at Homer, Alaska, by David C. Raskin, this 24th day of July 2014.




Notary Public, in and for Alaska
My commission Expires: 8/27/2016

Petitioner's Exhibit A	Page No.
Affidavit of Janyne Vierra	1
Affidavit of Cappie Clifford Harden	18
Affidavit of Jodie Mae Swearingen	20
Affidavit of Jodie Mae Swearingen	24
Affidavit of Randall Studer	28
Affidavit of Theresa Ross	32
Affidavit of Roger Harris, attaching Walker Recantation	35
Affidavit of Daniel Patrick Walsh	80
Affidavit of Cheryl Lowery	84
Affidavit of Earl Francis Childers	94
Affidavit of Michael O. Keerins	97
Affidavit of Michael O. Keerins	101

E. R. -218

Affidavit of Janyne Vierra

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

FRANK E. GABLE,

No. 07-CV-00413-AC

Petitioner,

AFFIDAVIT OF JANYNE VIERRA

vs.

MAX WILLIAMS,

Respondent.

STATE OF OREGON)
) ss.
County of Jackson)

I, Janyne Vierra, being duly sworn, depose and state under the penalty of perjury, as follows:

1. I testified as a witness for the State in the matter of *State of Oregon v. Frank Edward Gable*, Marion County Circuit Court Case No. 90-C-20442.
2. In January of 1989, I was married to Frank Gable. We lived together at 3755 Hawthorne Ave, N.E., Apartment 44, Salem, Oregon 97303. Our home telephone number was (503) 581-3812.
3. I was shown the documents attached hereto as Appendix A and Appendix B in July 2010 by Assistant Federal Public Defender Nell Brown and Federal Public Defender Investigator Wendy Kunkel.
4. Appendix A is a document entitled "Legal Notice to Quit," dated January 18, 1989, addressed to Janyne and Frank Gable, notifying us that we were to vacate Apartment 44 at 3775 Hawthorne N.E., Salem, Oregon 97303 due to "[t]oo much noise from late night

visitors.” The Legal Notice to Quit is signed by Lavonne Spencer Mgr., as Landlord.

5. Had I been shown the Legal Notice to Quit during my testimony at Frank Gable’s trial, I would have been able to testify as follows. I received the Legal Notice to Quit on January 18, 1989, because Frank had guests at the house on the previous night. In particular, a group of acquaintances showed up at our apartment around dark and stayed until 8:00 or 9:00 P.M., when the crowd, including Frank, went elsewhere. It was a memorable night because there was a dispute between one of our guests and a neighbor that spilled out onto the stoop. This dispute was the last straw for the apartment manager and it led to the Legal Notice to Quit the next day. Frank went out later that night and had not yet returned home by the time I woke up to prepare for work. I remember being worried that he was not going to return in time to drive me to work. However, he did eventually come home and drive me to work.
6. Appendix B contains telephone records for Cub Q P Inc. in Albany, Oregon for January 1989. The records contained in Appendix B reflect that the following calls were made from Cub Q P Inc. to our residence:
 - A. On January 17, 1989, at 4:22 P.M., a two-minute call was made to our residence.
 - B. On January 17, 1989, at 5:38 P.M., a five-minute call was made to our residence.
 - C. On January 18, 1989, at 9:27 A.M., a five-minute call was made to our residence.
7. If John Kevin Walker stated that he made these calls from Cub Q P Inc. to our residence, and that he spoke to Frank Gable during the two five-minute calls, I would have no reason to dispute that statement. In fact, had I been shown these telephone records during my testimony at Frank Gable’s trial, I would have testified that I do not dispute that Mr.

Walker spoke with Frank Gable at our residence at 5:38 P.M. on the evening of January

17, 1989 and again at 9:27 A.M. on the morning of January 18, 1989.

Janyne M. Vierra
JANYNE VIERRA

SUBSCRIBED AND SWORN to before me on July 7, 2014.



Wendy Ann Kunkel
Notary Public
My Commission Expires: 06/26/2016

Gable BoxGG00270

691270

STATE OF OREGON

LEGAL NOTICE TO QUIT

ss.

County of Marion

To Janyne & Gabe R. Gable
 You hereby are notified to quit, surrender and deliver up to the undersigned on the 18th day
 of February, 1989 those certain premises which you now hold from the undersigned, as tenant,
 described as follows: 83255 + 1/2 Acre Tract 778 #144
Subdiv. Ord. 94303

For much noise from late
night visitors
William Spencer, Mgr.
Landlord

DATED: Jan 18, 1989

EXTRACTS FROM OREGON REVISED STATUTES

ORS 91.070—Tenancy from month to month: (Notice to Terminate). One who holds the lands or tenements of another, under the demise of the other, and no certain time has been mentioned, but a monthly rental has been reserved, is considered a tenant from month to month. Except as otherwise provided by statute or agreement, such tenancy may only be terminated by either the landlord or tenant giving the other, at any time during the tenancy, not less than 30 days notice in writing prior to the date designated in the notice for the termination of the tenancy. The tenancy shall terminate on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy and holding, rents are to be paid.

ORS 91.090—Termination of tenancy by failure to pay rent; reinstatement. The failure of a tenant to pay the rent reserved by the terms of his lease for a period of 10 days, unless a different period is stipulated in the lease, after it becomes due and payable, operates to terminate his tenancy. No notice to quit or pay the rent is required to render the holding of such tenant thereafter wrongful; however, if the landlord, after such default in payment of rent, accepts payment thereof, the lease is reinstated for the full period fixed by its terms, subject to termination by subsequent defaults in payment of rent.

ORS 105.115—Causes of unlawful holding by force. The following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.125:

- (1) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after it is due under the lease or agreement under which he holds, or to deliver possession of the premises after being in default on payment of rent for 10 days.
- (2) When the lease by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month, or year to year, and remains in possession after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant of the lease or is holding possession without any written lease or agreement.

503-926-3728 264- 80 56A EX ALB BILL DATE 01/28/89

CUB Q P INC
1600 9TH AVE SE
ALBANY OR 97321

PREV LD CC B PAY BY 0221 NDC
1 0000047 R1 0221 000
2 0000055 DEP 0000000 R2 0000 000
AV 0000066 UTH 500 RB 0228 TD

ESTAB 031486 TRT HIST 000000000000
CIV 0000 DCK HIST 000000000000

SOC SEC 000-00-0000

CI CORP EST 3-86 NPBS PRES JACK GAMET 344-0504 SEC G
ORDON GAMET 926-1509 ET25 TRT GORDONBUS
PAGE 1

DATE PAYMENT DUE FEB 21, 1989

TOTAL DUE
361.96

CUB Q P INC

A LATE PAYMENT CHARGE OF \$.50 OR 1.5 PERCENT, WHICHEVER IS GREATER, WILL
APPLY TO ANY UNPAID AMOUNT OF \$30.00 OR MORE. PLEASE PAY THE TOTAL
DUE AS SHOWN ON THIS BILL TO AVOID THE LATE PAYMENT CHARGE.

ACCOUNT SUMMARY

AMOUNT PREVIOUSLY BILLED	DATE	PAYMENT	BALANCE DUE
82.61		.00	82.61

U S WEST COMMUNICATIONS DETAIL OF CURRENT CHARGES

CURRENT CHARGES	U S WEST COMMUNICATIONS	MCI TELECOMMUNICATIONS
MONTHLY RATE	104.46	
MISCELLANEOUS CHARGES	1.50	
ORDER ACTIVITY	1.84C	
LONG DISTANCE	33.09	89.77
LATE PAYMENT CHARGE		
ON \$82.61	1.24	
TAXES AND SURCHARGES		
STATE EXCISE AT 3% ON	2.27	
\$75.68	3.67	
U.S. AT 3% ON \$122.21		
U.S. AT 3% DN \$89.77		2.69

PAGE 3

503-926-3728C 264 BO 56A
U S WEST COMMUNICATIONS DETAIL OF CURRENT CHARGES
LONG DISTANCE

	DATE	TIME	CLASS	TO	FROM	NUMBER	MIN	FULL RATE	PCT DISC	NET CHARGE	
1.	1/03	1144AM	A TO	EUGENE	OR	485 4961	3	.59	-	.59	AO
2.	1/03	1148AM	A TO	JUNCTION	OR	998 3491	3	.18	-	.18	AO
3.	1/03	1151AM	A TO	EUGENE	OR	259 2414	3	.59	-	.59	AO
4.	1/03	1203PM	A TO	EUGENE	OR	461 2091	3	.59	-	.59	AO
5.	1/03	1203PM	A TO	EUGENE	OR	344 0504	3	.23	-	.23	AO
6.	1/03	1203PM	A TO	EUGENE	OR	485 1060	1	.41	-	.41	AO
7.	1/03	1238PM	A TO	EUGENE	OR	485 4961	2	.59	-	.59	AO
8.	1/03	244PM	A TO	EUGENE	OR	485 4961	2	.23	-	.23	AO
9.	1/04	936AM	A TO	EUGENE	OR	485 1060	1	.41	-	.41	AO
10.	1/04	1233PM	A TO	EUGENE	OR	451 4955	1	.18	-	.18	AO
11.	1/04	1238PM	A TO	EUGENE	OR	485 4961	1	.23	-	.23	AO
12.	1/04	1238PM	A TO	LEBANON	OR	259 2414	1	.18	-	.18	AO
13.	1/04	303PM	A TO	EUGENE	OR	485 1060	1	.23	-	.23	AO
14.	1/04	358PM	A TO	EUGENE	OR	451 4955	1	.48	-	.48	BO
15.	1/04	557PM	A TO	EUGENE	OR	345 3223	1	.41	-	.41	AO
16.	1/05	225PM	A TO	EUGENE	OR	345 3223	1	.33	-	.33	AO
17.	1/05	227PM	A TO	EUGENE	OR	453 3204	1	.78	-	.78	AO
18.	1/05	318PM	A TO	BLODGETT	OR	259 2414	1	.23	-	.23	AO
19.	1/06	903AM	A TO	LEBANON	OR	485 1060	1	.23	-	.23	AO
20.	1/06	925AM	A TO	EUGENE	OR	451 4955	1	.18	-	.18	AO
21.	1/09	924AM	A TO	LEBANON	OR	451 1497	1	.23	-	.23	AO
22.	1/09	930AM	A TO	EUGENE	OR	345 3223	1	.23	-	.23	AO
23.	1/09	949AM	A TO	SPRINGFLD	OR	747 9971	1	.23	-	.23	AO
24.	1/09	950AM	A TO	EUGENE	OR	683 6250	1	2.39	-	2.39	AO
25.	1/09	956AM	A TO	EUGENE	OR	344 0504	13	.59	-	.59	AO
26.	1/09	353PM	A TO	LEBANON	OR	258 2171	6	.33	-	.33	AO
27.	1/09	438PM	A TO	LEBANON	OR	451 4955	2	.41	-	.41	AO
28.	1/10	809AM	A TO	EUGENE	OR	485 4961	1	.23	-	.23	AO
29.	1/10	1027AM	A TO	EUGENE	OR	342 5914	5	.95	-	.95	AO
30.	1/10	1027AM	A TO	EUGENE	OR	485 4961	1	.23	-	.23	AO
31.	1/10	1212PM	A TO	EUGENE	OR	998 3491	1	.23	-	.23	AO
32.	1/10	325PM	A TO	JUNCTION	OR	998 3491	1	.23	-	.23	AO
33.	1/10	328PM	A TO	JUNCTION	OR	998 3491	1	.23	-	.23	AO
34.	1/10	329PM	A TO	JUNCTION	OR	998 3491	1	.23	-	.23	AO
35.	1/10	330PM	A TO	JUNCTION	OR	998 3491	1	.23	-	.23	AO
36.	1/10	408PM	A TO	LEBANON	OR	451 2757	2	.18	-	.18	AO
37.	1/11	1042AM	A TO	LEBANON	OR	451 1414	1	.41	-	.41	AO
38.	1/11	1125AM	A TO	JUNCTION	OR	998 3491	1	.23	-	.23	AO
39.	1/12	1002AM	A TO	EUGENE	OR	687 9610	1	.23	-	.23	AO
40.	1/12	247PM	A TO	JUNCTION	OR	998 3491	1	.23	-	.23	AO
41.	1/13	1107AM	A TO	LEBANON	OR	259 2414	2	.23	-	.23	AO
42.	1/13	1231PM	A TO	JUNCTION	OR	998 3491	1	.48	-	.48	AO
43.	1/13	155PM	A TO	LEBANON	OR	259 2414	3	.18	-	.18	AO
44.	1/13	439PM	A TO	LEBANON	OR	258 5345	1	.48	-	.48	AO
45.	1/16	1003AM	A TO	BLODGETT	OR	453 3204	3	.59	-	.59	AO
46.	1/16	1146AM	A TO	SPRINGFLD	OR	747 9971	3	1.53	-	1.53	AO
47.	1/16	247PM	A TO	LEBANON	OR	451 4955	10	.18	-	.18	AO
48.	1/17	407PM	A TO	LEBANON	OR	259 2414	1	.23	-	.23	AO
49.	1/17	412PM	A TO	EUGENE	OR	485 1060	1	.18	-	.18	AO
50.	1/18	903AM	A TO	LEBANON	OR	451 5713	1	.23	-	.23	AO
51.	1/18	1106AM	A TO	SPRINGFLD	OR	747 0123	1	.23	-	.23	AO
52.	1/18	442PM	A TO	EUGENE	OR	345 3305	11	2.03	-	2.03	AO
53.	1/19	913AM	A TO	EUGENE	OR	344 0504	14	2.57	-	2.57	AO
54.	1/19	928PM	A TO	JUNCTION	OR	998 3491	5	.18	-	.18	BO
55.	1/19	541PM	A TO	LEBANON	OR	451 4955	1	.33	-	.33	AO
56.	1/20	958AM	A TO	LEBANON	OR	451 1414	2		22		

PAGE 4

503-926-3728C 264 BO 56A
U S WEST COMMUNICATIONS DETAIL OF CURRENT CHARGES
LONG DISTANCE

DATE	TIME	CLASS	TO	FROM	NUMBER	MIN	FULL RATE	PCT DISC	NET CHARGE	
1/20	1124AM	A TO	LEBANON	OR	259 2414	1	.18	-	.18	AO
1/20	1137AM	A TO	EUGENE	OR	485 1060	1	.23	-	.23	AO
1/20	435PM	A TO	EUGENE	OR	344 0504	7	1.31	-	1.31	AO
1/23	137PM	A TO	JUNCTION	OR	998 3491	3	.59	-	.59	AO
1/23	142PM	A TO	JUNCTION	OR	998 3491	1	.23	-	.23	AO
1/23	145PM	A TO	JUNCTION	OR	998 3491	1	.23	-	.23	AO
1/24	817AM	A TO	LEBANON	OR	451 1414	1	.18	-	.18	AO
1/24	837AM	A TO	EUGENE	OR	345 3223	4	.77	-	.77	AO
1/24	354PM	A TO	LEBANON	OR	451 1743	3	.48	-	.48	AO
1/25	1037AM	A TO	SPRINGFLD	OR	747 9971	2	.41	-	.41	AO
1/26	1127AM	A TO	SPRINGFLD	OR	747 9971	1	.23	-	.23	AO
1/26	134PM	A TO	SPRINGFLD	OR	746 5040	3	.59	-	.59	AO
1/26	510PM	B TO	LEBANON	OR	451 1414	2	.33	24	.25	BO
TOTAL						178	33.33		33.09	

YOUR LONG DISTANCE SAVINGS THIS MONTH WAS \$.24.
THIS IS A 1% REDUCTION FROM THE FULL RATE.

CLASS OF CALL CODES--

A - DIALED-DAY-FULL RATE

B - DIALED-EVENING-DISCOUNTED

DEPENDENT ON THE TYPE AND DURATION OF YOUR LONG DISTANCE CALL TWO DIFFERENT DISCOUNTS COULD APPLY. THE PERCENT SHOWN IS A COMBINATION OF THE TWO DISCOUNTS CALCULATED TO GIVE YOU THE LOWEST POSSIBLE RATE.

TAX AND SURCHARGE SUMMARY U S WEST COMMUNICATIONS

THE DETAIL LISTED BELOW HAS BEEN INCLUDED IN THE CURRENT CHARGES ON THIS BILL. THIS SUMMARY IS PROVIDED AS INFORMATION ONLY.

MONTHLY RATE	US TAX	STATE TAX	SURCHARGE
MISCELLANEOUS CHARGES	2.69	2.27	.50
ORDER ACTIVITY	.04		
LONG DISTANCE	.99		

PAGE 1

503-926-3728C 264 80 56A

MCI TELECOMMUNICATIONS

OUT AND ABOUT AND NEED TO MAKE A LONG DISTANCE CALL? WITH THE MCI CARD'S EXCLUSIVE AROUND TOWN FEATURE, YOU'LL SAVE MONEY OVER REGULAR CARD CALLS WHEN CALLING LONG DISTANCE FROM ANY TOUCH-TONE PHONE IN YOUR LOCAL MCI AROUND TOWN CALLING AREA.

THE MCI CARD IS THE ONLY ONE OF ITS KIND OFFERING LONG DISTANCE SAVINGS AND CONVENIENCE WHENEVER YOU'RE 'AROUND TOWN'. TO FIND OUT HOW AROUND TOWN CAN SAVE YOU MONEY, OR TO ORDER YOUR MCI CARD, CALL NOW 1 800 444-4444.

SUMMARY OF CHARGES

CURRENT CHARGES

MCI LONG DISTANCE	91.32
TOTAL LONG DISTANCE	<u>91.32</u>
PROMOTIONAL CREDITS	\$1.55C
BONUS DISCOUNT	<u>1.55C</u>
TOTAL NET CREDITS	2.69
TAXES	<u>2.69</u>
U.S. TAX	92.46

TOTAL TAXES

TOTAL MCI AMOUNT DUE

MCI DETAIL OF CURRENT CHARGES

MCI LONG DISTANCE

NET CHARGE

NUMBER MIN

TO FROM

DATE TIME CLASS

1. 12/12
2. 12/13
3. 12/15
4. 12/15
5. 12/16
6. 12/16
7. 12/16
8. 12/16
9. 12/16
10. 12/19
11. 12/20
12. 12/20
13. 12/21
14. 12/21
15. 12/22
16. 12/22
17. 12/23
18. 12/23
19. 12/28
20. 12/30
21. 1/03

439PM D TO SALEM OR 390 7735 2 1

.58

D1

0000193

PAGE 2

503-926-3728C 264 BO 56A
MCI DETAIL OF CURRENT CHARGES
MCI LONG DISTANCE

	DATE	TIME	CLASS	TO	FROM	NUMBER	MIN	NET CHARGE	
1.	1/04	1153AM	D	TO	LYONS	859 2640	1	.33	D1
2.	1/04	1201PM	D	TO	LYONS	859 2640	2	.58	D1
3.	1/05	813AM	D	TO	SCIO	394 3380	1	.32	D1
4.	1/06	812AM	D	TO	KENT	206 520 8814	14	3.19	D7
5.	1/09	926AM	D	TO	OK	394 2310	1	.53	D1
6.	1/09	133PM	D	TO	SCIO	394 2310	1	.32	D1
7.	1/09	456PM	D	TO	SCIO	394 2310	1	.32	D1
8.	1/10	110PM	D	TO	HOLLYWOOD	305 457 8111	2	.54	D7
9.	1/10	350PM	D	TO	TIGARD	820 9232	8	2.14	D1
10.	1/13	1201PM	D	TO	LYONS	859 2640	2	.58	D1
11.	1/16	822AM	E	TO	SALEM	364 3289	6	1.17	E1
12.	1/16	1119AM	E	TO	SALEM	581 6601	4	.80	E1
13.	1/16	113PM	E	TO	SCIO	394 2310	1	.24	E1
14.	1/17	741AM	N	TO	SALEM	364 3289	1	.19	N1
								25.73	N1

SUBTOTAL

CALLS BILLED TO 926-5384

15.	12/13
16.	12/15
17.	12/15
18.	12/16
19.	12/21
20.	12/21
21.	12/22
22.	12/22
23.	12/27
24.	12/27
25.	12/27
26.	12/27
27.	12/28
28.	12/29
29.	12/29
30.	12/29
31.	12/29
32.	12/30
33.	12/30
34.	1/04
35.	1/04
36.	1/04
37.	1/04
38.	1/04
39.	1/04
40.	1/04
41.	1/04
42.	1/04
43.	1/04
44.	1/05
45.	1/05
46.	1/06
47.	1/06

1028AM	TO	SALEM	OR	364 4400	4	1.07	D1
1035AM	TO	SALEM	OR	364 4400	2	.58	D1
1053AM	TO	SALEM	OR	381 6601	1	.33	D1
1152AM	TO	SALEM	OR	393 9940	11	2.81	D1
1233PM	TO	INDEPENDENCE	OR	838 2014	1	.33	D1
1236PM	TO	MILL CITY	OR	897 2603	1	.43	E1
503PM	TO	SALEM	OR	363 2211	2	.63	E1
503PM	TO	SALEM	OR	371 7710	3	.43	E1
510PM	TO	SALEM	OR	363 3191	1	.33	E1
545PM	TO	SALEM	OR	859 2640	1	.33	D1
929AM	TO	LYONS	OK	859 2640	3	.33	D1
101PM	TO	SALEM	OR	364 6983	1	.33	D1
936AM	TO	LYONS	OR	859 2640	1	.33	D1
1026AM	TO	LYONS	OR		1		D1

PAGE 3

503-926-3728C 264 B0 56A
MCI DETAIL OF CURRENT CHARGES
MCI LONG DISTANCE

	DATE	TIME	CLASS	TO	FROM	NUMBER	MIN	NET CHARGE	
1.	1/06	1053AM	D	TO	SALEM	364	3366	.33	D1
2.	1/06	1117AM	D	TO	SALEM	364	0940	.33	D1
3.	1/06	454PM	D	TO	SALEM	364	0940	.33	D1
4.	1/09	157PM	D	TO	LYONS	359	2640	2.06	D1
5.	1/09	400PM	D	TO	SALEM	581	6601	1.07	D1
6.	1/09	436PM	D	TO	BANKS	324	3990	.60	D1
7.	1/10	107PM	D	TO	SCIO	354	3322	.32	D7
8.	1/10	135PM	D	TO	ELLYN	312	1799	2.07	D1
9.	1/10	202PM	D	TO	LYONS	859	2640	.83	D1
10.	1/10	454PM	D	TO	LYONS	859	2640	.83	D1
11.	1/11	108PM	D	TO	SALEM	588	6550	.33	D1
12.	1/11	150PM	D	TO	SALEM	364	3289	2.56	D1
13.	1/12	1001AM	D	TO	SALEM	362	3398	.33	D1
14.	1/12	339PM	D	TO	SALEM	390	7735	1.07	D1
15.	1/12	340PM	D	TO	SALEM	859	2640	.38	D1
16.	1/12	1124AM	D	TO	LYONS	324	3990	.34	D1
17.	1/13	1248PM	D	TO	BANKS	364	3289	.33	D1
18.	1/13	1258PM	D	TO	SALEM	390	7735	.43	D1
19.	1/16	1159AM	D	TO	SALEM	581	2014	.43	E1
20.	1/16	1201PM	E	TO	SALEM	364	4589	.25	E1
21.	1/16	425PM	E	TO	SALEM	390	7209	.33	E1
22.	1/17	142PM	D	TO	SALEM	390	7209	1.07	D1
23.	1/17	329PM	D	TO	SALEM	581	1821	.33	D1
24.	1/17	333PM	D	TO	SALEM	581	3812	.58	E1
25.	1/17	422PM	D	TO	SALEM	859	2640	.65	E1
26.	1/17	526PM	D	TO	LYONS	362	1458	.49	E1
27.	1/17	535PM	E	TO	SALEM	581	3812	.99	E1
28.	1/17	538PM	E	TO	SALEM	581	7025	.25	E1
29.	1/17	544PM	E	TO	SALEM	581	7025	1.32	D1
30.	1/18	927AM	D	TO	SALEM	581	3812	1.57	D1
31.	1/18	125PM	D	TO	SALEM	390	7209	2.31	D1
32.	1/18	245PM	D	TO	SALEM	588	6550	.33	D1
33.	1/18	259PM	D	TO	SALEM	581	1181	1.75	D1
34.	1/18	454PM	D	TO	SALEM	390	7209	.43	E1
35.	1/18	521PM	E	TO	SALEM	390	7209	1.32	D1
36.	1/18	650PM	E	TO	SALEM	390	7209	.33	D1
37.	1/19	1137AM	D	TO	SALEM	390	7209	.33	D1
38.	1/19	1150AM	D	TO	SALEM	390	7209	.33	D1
39.	1/19	1255PM	D	TO	SALEM	390	7209	.33	D1
40.	1/19	309PM	D	TO	SALEM	390	7209	.33	D1
41.	1/19	352PM	D	TO	SALEM	390	7209	.33	D1
42.	1/19	327PM	D	TO	SALEM	390	7735	1.82	D1
43.	1/19	402PM	D	TO	SALEM	581	3812	1.57	D1
44.	1/19	423PM	D	TO	SALEM	581	3812	.83	D1
45.	1/19	452PM	D	TO	SALEM	390	7209	.33	D1
46.	1/19	453PM	D	TO	SALEM	581	3812	.33	D1
47.	1/19	538PM	D	TO	SALEM	581	3812	.33	E1
48.	1/19	541PM	E	TO	SALEM	390	7209	.43	E1

PAGE 4

503-926-3728C 264 80 56A
 MCI DETAIL OF CURRENT CHARGES
 MCI LONG DISTANCE

DATE	TIME	CLASS	TO FROM	NUMBER	MIN	NET CHARGE	
CALLS BILLED TO 926-5384							
1:	1/19	543PM	E TO SALEM	390 7735	1 1	.25	N1
2:	1/19	602PM	E TO SALEM	581 1821	1 1	.25	E1
SUBTOTAL						65.59	E1
TOTAL						91.32	E1

CLASS OF CALL CODES--
 D - DAY
 E - EVENING
 N - NIGHT/WEEKEND

TAX AND SURCHARGE SUMMARY MCI

THE DETAIL LISTED BELOW HAS BEEN INCLUDED IN THE CURRENT CHARGES ON THIS BILL. THIS SUMMARY IS PROVIDED AS INFORMATION ONLY.

US
 TAX

LONG DISTANCE 2.69
 THIS PORTION OF YOUR BILL IS PROVIDED AS A SERVICE TO MCI.
 THERE IS NO CONNECTION BETWEEN U S WEST COMMUNICATIONS AND MCI.

1-00195

503-926-3728 264- BO 56A EX ALB BILL DATE 02/28/89

CUB Q P INC
 1600 9TH AVE SE
 ALBANY OR 97321

PAY BY 0321 NDC
 R1 0321
 R2 0000 000
 RB 0328 TD

PREV LD CC B
 1 0000122
 2 0000047 DEP 0000000
 AV 0000071
 UTM 500

ESTAB 031486 TRT HIST 000000000000
 CIV 0000 DOK HIST 000000000000

CLSV JBG

SOC SEC 000-00-0000

CI CORP EST 3-86 MRS PRES JACK GAMET 344-0504 SEC G
 ORDN GAMET 926-1509 ET25 TRT GORDONBUS
 PAGE 1

928-5524 -- NO CHARGE DATE PAYMENT DUE MAR 21, 1989

TOTAL DUE
 533.41

CUB Q P INC
 A LATE PAYMENT CHARGE OF \$.50 OR 1.5 PERCENT, WHICHEVER IS GREATER, WILL
 APPLY TO ANY UNPAID AMOUNT OF \$30.00 OR MORE. PLEASE PAY THE TOTAL
 DUE AS SHOWN ON THIS BILL TO AVOID THE LATE PAYMENT CHARGE.
 ACCOUNT SUMMARY

AMOUNT PREVIOUSLY BILLED	DATE	PAYMENT
361.96	02/23	82.61

U S WEST COMMUNICATIONS DETAIL OF CURRENT CHARGES

CURRENT CHARGES	U S WEST COMMUNICATIONS	MCI TELECOMMUNICATIONS	BALANCE DUE
MONTHLY RATE	104.46		
LONG DISTANCE	14.13	80.97	
LATE PAYMENT CHARGE	4.19		
ON \$279.35			
TAXES AND SURCHARGES	2.27		
STATE EXCISE AT 3% ON	3.11		
\$75.68			
U.S. AT 3% ON \$103.59		2.43	
U.S. AT 3% ON \$80.97			
SERVICE ASSIST PROGRAM	.50		
SURCHARGE \$.25 PER LINE			
	<u>128.66</u>	<u>83.40</u>	
		SUBTOTAL	212.06

E. R. -231

PAGE 2

NET
CHARGE

NIH

NUMBER

TO FROM

DATE TIME CLASS

1. 2. 3. 4. 5. 6. 7.

CALLS RILLED TO 926-5384

8.	1/20	236PM	D	E	E	N	D	T	TO	SALEM	DR
9.	1/20	544PM	D					T	TO	SALEM	DR
10.	1/20	545PM	D					T	TO	SALEM	DR
11.	1/22	200PM	D					T	TO	SALEM	DR
12.	1/23	857AM	D					T	TO	SALEM	DR
13.	1/23	946AM	D					T	TO	SALEM	DR
14.	1/23	138AM	D					T	TO	SALEM	DR
15.	1/23	334PM	D					T	TO	SALEM	DR
16.	1/24	224PM	D					T	TO	SALEM	DR
17.	1/24	547PM	D	E				T	TO	LYONS	DR
18.	1/25	300PM	D					T	TO	PORTLAND	DR
19.	1/30	900AM	D					T	TO	SALEM	DR
20.	1/30	337PM	D					T	TO	SALEM	DR
21.	1/31	910AM	D					T	TO	MILL CITY	DR

1.07	D1	D7
1.25	E1	
1.43	E1	
1.58	N1	
1.11	D1	
1.33	D1	
1.83	D1	
1.33	D1	
1.25	E1	
1.63	D1	
1.83	D1	
2.31	B1	
1.58	D1	

CLASS OF CALL CODES--
D - DAY
E - EVENING
N - NIGHT/WEEKEND

PAGE 1

593-926-3728C 264 80 56A
 MCI TELECOMMUNICATIONS

HAVE A QUESTION ABOUT YOUR MCI SERVICE OR BILL? REPRESENTATIVES AT OUR 24-HOUR CUSTOMER SERVICE CENTER ARE EAGER TO ASSIST YOU WITH ANY QUESTION YOU HAVE ABOUT MCI'S SERVICE OR PRODUCTS. THEY'LL ALSO PROVIDE YOU OUR LONG DISTANCE RATES, EXPLAIN OUR NEW PRODUCTS AND ENHANCEMENTS, OR SEND YOU FREE OUR WIDELY-USED MCI CARD.

THE NEXT TIME YOU HAVE A QUESTION OR PROBLEM, CALL OUR CUSTOMER SERVICE CENTER. YOU'LL RECEIVE PROFESSIONAL, FRIENDLY SERVICE. IT'S WHAT WE'RE KNOWN FOR IN THE INDUSTRY--AND WHAT YOU EXPECT FROM MCI. CALL US TOLL-FREE AT 1 800-444-3333 RESIDENTIAL OR 1 800-444-2222 COMMERCIAL.

SUMMARY OF CHARGES

CURRENT CHARGES
 MCI LONG DISTANCE 48.85
 MCI CARD LONG DISTANCE 33.26
 TOTAL LONG DISTANCE 82.11
 PROMOTIONAL CREDITS 1.14C
 BONUS DISCOUNT 1.14C
 TOTAL NET CREDITS 2.43
 TAXES U.S. TAX 2.43
 TOTAL TAXES 83.40
 TOTAL MCI AMOUNT DUE 83.40

MCI DETAIL OF CURRENT CHARGES
 MCI LONG DISTANCE

DATE	TIME	CLASS	TO	FROM	NUMBER	MIN	NET CHARGE	
1.	1/20	1030AM	D	TO	812 945 2617	2	.34	D7
2.	1/22	149PM	N	TO	390 7209	1	.19	N1
3.	1/22	153PM	N	TO	390 7209	6	.94	N1
4.	1/23	803AM	D	TO	394 3380	1	.32	D1
5.	1/24	838AM	D	TO	390 7209	4	1.07	D1
6.	1/24	1059AM	D	TO	364 3289	6	1.57	D1
7.	1/26	1032AM	D	TO	364 3289	1	.33	D1
8.	1/26	436PM	D	TO	394 3382	2	.53	D1
9.	1/30	1031AM	D	TO	855 2840	1	.33	D1
10.	1/30	1038AM	D	TO	855 2840	2	.58	D1
11.	1/30	311PM	D	TO	239 6694	1	.60	D1
12.	1/31	855AM	D	TO	364 7882	1	.33	D1
13.	2/02							
14.	2/07							
15.	2/08							
16.	2/09							
17.	2/10							
18.	2/13							

0000193

PAGE 2

503-926-3728C 264 BO 56A
U S WEST COMMUNICATIONS DETAIL OF CURRENT CHARGES
CURRENT CHARGES
U S WEST
DIRECT

DIRECTORY ADVERTISING 42.00
42.00

SUBTOTAL 42.00
TOTAL 254.06
TOTAL DUE 533.41

MONTHLY RATE FROM 02/28/89 TO 03/28/89

QUAN- TITY	CODE	DESCRIPTION	ITEM RATE	MONTHLY CHARGE
2	JBG	PREMIUM FLAT LINE	37.84	75.68
1	MVP	CENTRALEX FEATURE PACKAGE	8.00	8.00
1	MVPAL	DISCOUNTED CENTRALEX	7.00	7.00
1	MVPBL	FEATURE PACKAGE	2.00	2.00
2	9ZR	CALL FORWARDING BUSY DID INCOMING ONLY FCC SUBSCRIBER LINE CHARGE	5.89	11.78
TOTAL			104.46	

LONG DISTANCE

DATE	TIME	CLASS	TO	FROM	NUMBER	MIN	FULL RATE	PCT DISC	NET CHARGE
1.	1/27	101PM	A	TO	747 9971	1	.23	-	.23
2.	1/30	319PM	A	TO	485 4961	3	.59	-	.59
3.	1/30	323PM	A	TO	746 5040	2	.41	-	.41
4.	1/30	454PM	A	TO	369 2630	1	.18	-	.18
5.	1/31	919AM	A	TO	451 1414	1	.18	-	.18
6.	1/31	946AM	A	TO	345 3305	3	.59	-	.59
7.	2/06								
8.	2/07								
9.	2/07								
10.	2/07								
11.	2/07								
12.	2/07								
13.	2/07								
14.	2/07								
15.	2/08								
16.	2/08								
17.	2/08								
18.	2/10								
19.	2/13								
20.	2/14								
21.	2/14								
22.	2/14								
23.	2/15								
24.	2/16								
25.	2/16								
26.	2/17								
27.	2/21								
28.	2/22								
29.	2/22								
30.	2/22								
31.	2/23								

503-581-5704 646 BO 758 EX SAL BILL DATE 01/07/89

KRIS KAY
3182 HYACINTH ST NE
SALEM OR 97303

PREV LD CC X PAY BY 0130 NDC
1 0000004
2 0000014 DEP 0000000 RT 0130 000
AV 0000020 UTH 050 PB 0206 TD

ESTAB 052587 TRT HIST 000000000000
CIV 1088 DCY HIST 000000000000

CLSN 1FR

SOC SEC 542-81-2698

CI E NPS UNEMPLD LOOKG FOR WK LVS ALN CDR 393-1772
MON 393-1772 (KRIS IS MALE)

TELEPHONE REPRESENTATIVE
393-1535 -- NO CHARGE

DATE PAYMENT DUE JAN 30, 1989

TOTAL DUE
105.84

KRIS KAY

A LATE PAYMENT CHARGE OF \$.50 OR 1.5 PERCENT, WHICHEVER IS GREATER, WILL
APPLY TO ANY UNPAID AMOUNT OF \$30.00 OR MORE. PLEASE PAY THE TOTAL
DUE AS SHOWN ON THIS BILL TO AVOID THE LATE PAYMENT CHARGE.

ACCOUNT SUMMARY

AMOUNT PREVIOUSLY BILLED	DATE	PAYMENT
257.46	12/06	230.00

U S WEST COMMUNICATIONS DETAIL OF CURRENT CHARGES

CURRENT CHARGES U S WEST COMMUNICATIONS AT&T

MONTHLY RATE 25.07
MISCELLANEOUS CHARGES 14.00
DTEP ACTIVITY 10.00
LONG DISTANCE 13.91
TAXES AND SURCHARGES
STATE EXCISE AT 32 ON 514.05
U.S. AT 32 ON \$52.23
U.S. AT 32 ON \$12.78
SERVICE ASSIST PROGRAM
SUPCHARGE \$.25 PER LINE

12.78

.38

.25

65.22

78.3F

105.84

TOTAL

TOTAL DUE

0000200

E. R. -235

Affidavit of Cappie Clifford Harden

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

FRANK E. GABLE,

No. 07-CV-00413-AC

Petitioner,

**AFFIDAVIT OF CAPPIE CLIFFORD
HARDEN**

vs.

MAX WILLIAMS,

Respondent.

STATE OF IOWA)
) ss.
County of Polk)

I, Cappie Clifford Harden, being duly sworn, depose and state as follows:

1. In May 1991, I testified at the trial in *State of Oregon v. Frank Edward Gable*, Marion County Circuit Court Case No. 90-C-20442.
2. I testified that I witnessed Frank Gable murder Michael Francke in January 1989 in the Dome Building parking lot in Salem, Oregon. This testimony was untrue.
3. I did not see Frank Gable on the night that Michael Francke was murdered. I was at home that night. I was not at the Dome Building, and I did not pick Jodie Swearingen up there. I did not see Frank Gable stab Michael Francke.
4. I was contacted by the Oregon State Police on numerous occasions in connection with the Michael Francke murder investigation starting in late 1989. I was incarcerated at the time. I was told that Frank Gable had informed against me previously. The police questioned and polygraphed me many times, and brought me to the crime scene. I initially told the truth, which was that I was not an eyewitness to the Francke murder. However, after the police threatened me and my family I eventually adopted the false story to which I testified at Grand Jury and trial.


CAPPIE CLIFFORD HARDEN

SUBSCRIBED AND SWORN to before me on Feb 11, 2009


Notary Public
My Commission Expires:

Notarial Seal - State of Iowa
Thomas L. Hofbauer
Commission Number 701233
My Commission Expires: 01-14-12

E. R. -237

Affidavit of Jodie Mae Swearingen

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

AFFIDAVIT OF JODIE MAE
SWEARINGEN

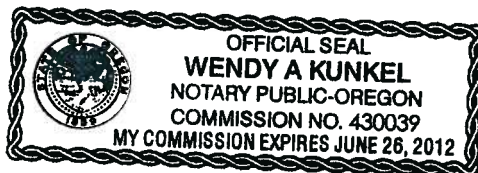
STATE OF OREGON)
) ss.
County of Mason)

I, Jodie Mae Swearingen, being duly sworn, depose and state as follows:

1. In 1991, Frank Gable's defense team prepared the affidavit that is attached hereto as Exhibit 1 based on my statements to them regarding the investigation into the murder of Michael Francke by the Oregon State Police.
2. The statements contained in Exhibit 1 are true.
3. By signing this affidavit, I am adopting the statements contained in Exhibit 1.

Jodie Swearingen
JODIE MAE SWEARINGEN

SUBSCRIBED AND SWORN to before me on April 9, 2010, 2009: 2010



Wendy A. Kunkel
Notary Public
My Commission Expires: June 26, 2012

Petitioner's Exhibit A
Page 22

Shorty to conform my story to his and keep me cooperating.
because he was.

During the polygraph tests the police were telling me which tests they felt were right and which were wrong. This was told to me so I could tell what they wanted to hear me say. I would tell them the truth and they would say I was lying. I told them what they wanted to hear, and they said that I was telling the truth when in fact it was a lie. This type of event went on with several important facts they were excited to hear about.

One time one of the officers became real frustrated and he was slamming things around. He was so mad that he was spitting on himself. He was trying to intimidate me. He told me that his job was on the line. He pointed his finger at me and said, "if this next test doesn't come out right i'll flush you down the toilet like a fucking turd".

The Oregon State Police interviewed me for several hours at a time. They polygraphed me one, two and even three times a day. They did this over all hours of the day. The earliest was around breakfast time, approx. 6:30 am and the latest was about 3:00 am. The counselors at Hillcrest were upset with them bringing me in late.

I was under a lot of stress during this period of time and I even spit up blood because of my stress.

There are other things that happened to pressure me.

Jodie Mae Swearingen

SUBSCRIBED AND SWORN to before me this ____ day of April, 1991.

Notary Public for Oregon
My Commission Expires:_____

E. R. -241

Affidavit of Jodie Mae Swearingen

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

**AFFIDAVIT OF JODIE MAE
SWEARINGEN**

STATE OF OREGON)
) ss.
County of Marion)

I, Jodie Mae Swearingen, being duly sworn, depose and state as follows:

1. In June 1991, I testified at the trial in *State of Oregon v. Frank Edward Gable*, Marion County Circuit Court Case No. 90-C-20442. I gave the following truthful testimony: I was not on the Oregon State Hospital grounds on January 17, 1989. I did not see Frank Gable stab Michael Francke. I did not meet Frank Gable until after the Francke murder. I met Gable during Summer 1989. Frank Gable never told me that he killed Michael Francke. If called to testify in a re-trial of this case, I would testify as I did at the original trial.
2. On cross-examination, I was asked about my previous statements to the police and to the Grand Jury in connection with the Francke murder investigation. Each of the previous

statements that conflicted with my trial testimony was false.

3. I was contacted by the Oregon State Police on numerous occasions in connection with the Michael Francke murder investigation. The State Police had me take polygraph examinations. The State Police also took me to the crime scene. Most of the facts I remember today, are facts that were told to me by the Oregon State Police.
4. I was nineteen at the time of trial, but I was sixteen at the time of the murder. I was a heavy methamphetamine user and associated with other meth users. When I was first approached by the police, I felt that it was okay to lie and say that Frank Gable committed the murder. In fact, I believed that lying about Frank Gable was the right thing to do because I was told that Gable had ratted on my friends, including Bill Storm and others.
5. During a portion of the investigation, I was detained as a material witness. I was scared that I would be in jail for the rest of my life if I did not tell the police what they wanted to hear. However, I also felt increasingly guilty about the impact my lies would have on Frank Gable. My attorney, Mark McKnight, helped me do the right thing by testifying truthfully at trial.
6. I do not particularly care for Frank Gable, but I feel that he does not deserve to be in jail as a result of the false statements I made to the police and Grand Jury.
7. I knew Tim "Rooster" Natividad. On the night of January 17, 1989, I was with Rooster. He picked me up from the house belonging to John and Kelly Bender on Hyacinth Street. I frequently spent time at this house during that time period. I do not know what time Rooster picked me up. We drove around and eventually went to the home of Cappie "Shorty" Harden that night. This home was on Center Street near the Greyhound Bus Station in Salem, Oregon. Rooster went in without me. When he came back to the car, he

handed me a bag, which I threw away in a dumpster. He told me to stay there with Shorty and he left. I did not want to stay there so I returned to the house on Hyacinth Street. I do not recall how I got back to Hyacinth Street. Rooster was killed shortly thereafter.

Jodie Swearingen
JODIE MAE SWEARINGEN

SUBSCRIBED AND SWORN to before me on April 9, 2010, ~~2009~~.



Wendy A. Kunkel
Notary Public
My Commission Expires: 6/26/12

E. R. -245

Affidavit of Randall Studer

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

AFFIDAVIT OF RANDALL STUDER

STATE OF OREGON)
) ss.
County of Marion)

I, RANDALL STUDER, being duly sworn, depose and state as follows:

1. I was designated by the prosecution as a material witness in *State of Oregon v. Frank Edward Gable*, Marion County Circuit Court No. 90-C-20442.
2. I knew Frank Gable because he was married to my sister, Janyne Gable. I was not fond of Frank Gable because he and I fought over a drug debt and he was not good for Janyne.
3. I was first interviewed by law enforcement in connection with the investigation of the Francke murder in September 1989. At that time, I told the Oregon State Police the truth. Specifically, I told the Oregon State Police that Frank Gable never told me he was involved in the murder of Michael Francke.
4. During that first interview, I also told the Oregon State Police that Doug Scritchfield confessed to me that he (Doug) was involved in the murder.

5. Around the same time, the Oregon State Police also questioned Linda Perkins, the mother of my then-live-in-girlfriend, Theresa Ross. Ms. Perkins told the Oregon State Police that she was in my home the day after the murder and overheard Frank Gable confess to me that he had murdered someone from corrections. This did not happen. Frank Gable did not confess to me. Ms. Perkins was not in my home that day.
6. Despite my initial statement, the Oregon State Police continued to question me regarding the murder in October, November, and December of 1989 and again in Spring 1990.
7. Throughout 1989, I maintained my truthful story that Frank Gable never confessed any involvement in the Francke murder to me.
8. During this time, the Oregon State Police administered numerous polygraph examinations. It did not seem to matter what answers I gave. When I told the truth during the examinations (*i.e.*, that Frank Gable had never confessed to me), the examiner concluded that I was lying. It was not until I later changed my story to a lie implicating Frank Gable in the murder, as described below, that the polygraph examiner concluded I was truthful.
9. Over time and under the pressure of police interrogation and polygraphs, I made the following statements that were untrue. First, I conceded that it was possible that, because I was using drugs, I was unable to recall Frank Gable's confession although I knew Frank Gable had never confessed to me. Second, I falsely told the Oregon State Police that Doug Scritchfield had not only confessed to the murder but had also implicated Frank Gable.
10. The Oregon State Police continued to insist that I confirm Ms. Perkins's story that Frank Gable had confessed to me. I felt that they were shoving this theory down my throat.
11. In January 1990, I was charged with a serious offense. The District Attorney and Oregon State Police threatened me with a ten-year prison sentence. However, they offered me a

suspended sentence with one year at the Marion County work release center if I testified against Frank Gable.

12. Facing this significant prison sentence, I did not feel that I had any choice but to agree to testify. I accepted the plea offer. I told the police what they wanted to hear. Specifically, I told the Oregon State Police that on the morning of January 18, 1989, Frank Gable had confessed to murdering someone the previous evening. This statement was untrue. Nevertheless, the Oregon State Police conducted a polygraph examination and concluded the statement was truthful. ~~I testified to this statement at the Grand Jury that indicted Frank~~ *RS* Gable. I never testified ~~at~~ that trial. Instead, I absconded when I was released to the Marion County work release center. I left the State of Oregon to avoid testifying.
13. If I were called to testify in a re-trial in this matter, I would testify: that Frank Gable never confessed to me that he murdered Michael Francke; that I am not aware of any involvement by Frank Gable in the murder; and that I previously lied to the Oregon State Police, District Attorneys, ~~and Grand Jury~~ *RS* because I felt I had no choice but to lie to avoid going to prison.
14. I did not talk with Frank Gable's defense team prior to his trial.

Randall J. Studer
RANDALL STUDER

SUBSCRIBED AND SWORN to before me on 03/24, 2011.



Wendy A. Kunkel
Notary Public
My Commission Expires: 6/26/2012

E. R. -249

Affidavit of Theresa Ross

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

AFFIDAVIT OF

THERESA ROSS

STATE OF OREGON)
) ss.
County of Marion)

I, THERESA ROSS, being duly sworn, depose and state as follows:

1. FRANK GABLE NEVER CONFESSED TO ME OR IN MY
PRESENCE THAT HE WAS INVOLVED WITH THE MURDER OF
MICHAEL FRANCKE.

2. LINDA PERKINS, MY MOTHER, NEVER HEARD FRANK GABLE
CONFESS TO THE MURDER OF MICHAEL FRANCKE. SHE GOT
INVOLVED BECAUSE SHE LIKES TO HAVE HER NAME
IN THE LIMELIGHT.

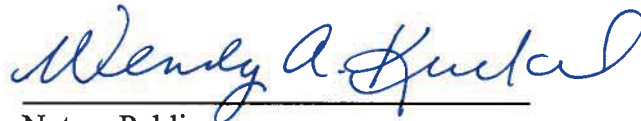
[INTENTIONALLY LEFT BLANK]



NAME: THERESA ROSS

SUBSCRIBED AND SWORN to before me on 3/15, 2011. 2012





Notary Public

My Commission Expires:

E. R. -252

Affidavit of Roger Harris

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

AFFIDAVIT OF ROGER HARRIS

STATE OF OREGON)
) ss.
County of Multnomah)

I, Roger Harris, being duly sworn, depose and state under the penalty of perjury, as follows:

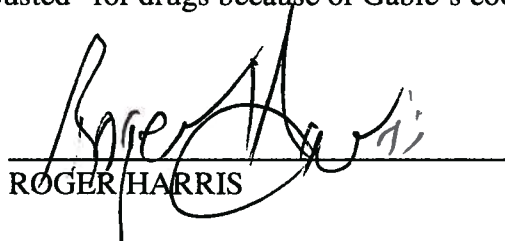
1. I am a trained investigator. A copy of my curriculum vitae is attached hereto at Appendix A.
2. From approximately late 1990 to 1991, I worked as an investigator for the trial team that defended Frank Gable in the proceedings captioned *State of Oregon v. Frank Edward Gable*, Marion County Circuit Court Case No. 90-C-20442.
3. After Mr. Gable was convicted, I was engaged by Mr. Gable's then-wife, Karen Steele Gable, to continue investigating.
4. In the course of this engagement, I interviewed John Kevin Walker on August 6, 1993, in Salem, Oregon (the "Walker interview" or "interview"). Mr. Walker had testified for the State at Mr. Gable's criminal trial. On August 6, 1993, Mr. Walker spoke with me voluntarily. I did not provide Mr. Walker any benefits or inducements to speak with me.
5. I made an audio recording of the Walker interview. The audio recording attached as

Appendix B to this affidavit is a true and accurate copy of the recording of that interview.


6. During the Walker interview, I reviewed the transcript of Mr. Walker's trial testimony in Marion County Case No. 90-C-20442 with Mr. Walker. Mr. Walker told me that he had committed perjury during his trial testimony and that he had also lied to the Oregon State Police ("OSP") during the course of the Francke murder investigation.
7. I found the following statements by Mr. Walker during the interview particularly significant to my investigation:
 - A. Mr. Walker made false statements to the OSP during the Francke murder investigation. Mr. Walker initially told the OSP the truth, including during the initial police interviews and his first polygraph examination; however, after the OSP told him his truthful statements were lies, intimidated him, and implicitly threatened to charge him as an accessory to the murder, Mr. Walker lied to satisfy the OSP and to "save [his] own butt."
 - B. Mr. Walker lied under oath during Mr. Gable's criminal trial.
 - C. Mr. Walker's testimony that he did not see Mr. Gable on the night of January 17, 1989 was false. In fact, Mr. Walker saw Mr. Gable, along with Robert Cornett and Mark Gesner, at Gable's residence between 6:00 p.m. and 11:00 p.m. on the night of January 17, 1989. Mr. Walker was at the Gable residence before he went to Paul Farm's residence and listened to the chatter on the police scanner regarding an incident on the State Hospital grounds. Mr. Walker never told the OSP this information.
 - D. Mr. Walker's testimony that Mr. Gable confessed to him on January 18, 1989, to having "stuck" that guy over at the State Hospital grounds the previous night was

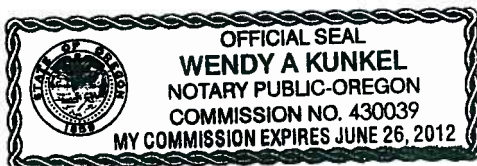
false. In fact, Mr. Gable never confessed to the murder in Mr. Walker's presence and never told Mr. Walker that he "stuck" anyone.

- E. Mr. Walker's testimony was false in the following other respects. Mr. Walker lied about Mr. Gable's crank (methamphetamine) use. Mr. Walker never sold Mr. Gable a .357 Magnum. Mr. Gable never pointed a gun at Mr. Walker. Mr. Gable never threatened Mr. Walker's family.
- F. Prior to Mr. Gable's criminal trial, both Michael Keerins and Mark Gesner told Mr. Walker that they lied about Mr. Gable involvement in the Francke murder. Keerins did so to save himself, and Gesner was hoping for better treatment in his federal criminal case.
- G. Once Mr. Walker was on parole, he would have done anything to stay out of prison. Moreover, Mr. Walker thought Mr. Gable snitched on him and Mark Gesner, and that they were "busted" for drugs because of Gable's cooperation with law enforcement.


ROGER HARRIS

SUBSCRIBED AND SWORN to before me on August 4, 2010.


Notary Public
My Commission Expires: *June 26, 2012*



Roger K. Harris
P.O. Box 357
Canby, OR 97013

office 503-266-8978
cellular 503-720-1909

INVESTIGATOR

Experience and Selected Achievements

Successful owner/operator of private investigations business from April 1989 to the present. During this period I have been a defense investigator or mitigator on more than sixty murder and aggravated murder cases

Special Agent, U.S. Naval Investigative Service, Naval Intelligence, 1976-1989. Conducted counterintelligence and major criminal investigations for the Department of the Navy

University of Maryland, 1981-1984
Taught Chinese and Japanese History and Civilization

U.S. National Security Agency, 1973-1976
Conducted intelligence information analysis
Achieved professionalization as Japanese Linguist

Education

University of Hawaii, M.A.
Church College of Hawaii, B.A. (cum laude)

Professional Training

Advanced Criminal Investigations -- Naval Investigative Service
Narcotics Investigations -- Drug Enforcement Administration
Protective Service Operations and Management -- Secret Service
Counterintelligence and Counterespionage -- U.S. Naval Intelligence and Central Intelligence Agency
Advanced Hostage Negotiations -- federal and state agencies
Advanced Japanese language -- government and private institutions

Awards

Superior Performance Award -- U.S. Naval Intelligence, outstanding service in operations in the Indian Ocean 1981-1982

Commendation by Japan's Drug Enforcement Agency for successful interdiction of drug trafficking in Japan

Commendation by Japan Police Superintendent for illicit weapons recovery and successful resolution of a series of violent crimes involving U.S. Forces and Japanese personnel

Commendation by Japanese Customs Agency for interdicting a smuggling operation

Awarded Outstanding Student trophy by U.S. Drug Enforcement Administration at narcotics school, 1977

Audio of John Kevin Walker Interview, dated August 6,
1993, is available at:

http://or.f.d.org/audio/John_Kevin_Walker_Interview_Aug_6_1993.mp3

Roger Harris interview with John Kevin Walker, August 6, 1993 re: Kevin Walker's testimony in Frank Gable's trial for murder of Michael Francke.

RH: Roger Harris. I'm an investigator, uh, working on behalf of Karen Gable. Today is August 6th, I believe, and I'm talking to, uh, John Kevin Walker at his house near Salem, and, uh, Kevin, you want to introduce yourself and just say if there's any coercion or anything going on here?

JKW: Yeah, my name is John Kevin Walker. There is no coercion going on. I'm not being promised any money. I'm giving this statement freely, um...

RH: Ok.

JKW: ...and I'm ready to begin.

RH: Alright. Me, too. What we're gonna do is go through the points, in, uh, the transcript of your testimony in court, um, in Frank Gable's trial, and just, uh, discuss, uh, the vario...various points, uh, in your testimony, and I'll just sort of skim through here to find a first topic. Said you were residing in Salem uh...um, first personally met Frank at a friend's house; Russ Eastep. Could you discuss that?

JKW: I was selling, um, crank to Russ for resale to, um...I was...I wa...I met Frank through Russ, because I was selling crank to Russ for resale by Russ to Frank. Russ got tired of being the middleman, and um, introduced me to Frank because he said, 'Well, Frank's just got out of the joint, too, and, you know, he doesn't have any problems meeting you if you want to meet him,' and I told Russ that'd be alright.

RH: Do you remember where that was?

JKW: Um, on...the apartment on Hawthorne.

RH: Ok, was that Frank's apartment or Russ's?

JKW: No, it was...it was at Russ's apartment.

RH: And about when was that?

JKW: Somewhere in '88. The beginning of '88.

RH: Ok. And, let's see, in your testimony here it says, uh, Frank was, uh, living around the corner, or Russ was living around the corner from where Frank was living.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 2

JKW: Russ was living in the second building...as you pull into the apartment complex, there were three buildings; two of them running perpendicular to Hawthorne, the

third building running parallel to Hawthorne. Russ lived in the second perpendicular building to Hawthorne and Frank lived in the parallel building to Hawthorne.

RH: Ok. And who was living with Frank?

JKW: Uh, Janyne...Janyne and, uh, Jessica.

RH: Ok. In the testimony it says, uh, let's see, the question was, 'How was it that Russ Eastep introduced you to Frank?' You said you were selling some crank to Russ. Ok, this is probably what you just explained. Um, Russ would run over to Frank's and sell it. Russ got tired of being the third man. Ok. Frank was in the kitchen and, uh...

JKW: Well, it, uh, actually got to the point where Frank would see my car pull in, and immediately after that, like within ten, fifteen minutes, Russ would be knocking on Frank's door saying, 'I got the stuff that you want,' and it got to the point where Frank would recognize the car pulling in, and then asked him if he could m...could meet me, and I said...and that's when Russ said, 'Well, he wants to meet you, you want to meet him, and I'm tired of being third...the middleman,' so...

RH: Yeah. Ok the testimony says that, uh...uh, you'd both been in the [Oregon State] Penitentiary and you thought you knew him from the Penitentiary, or knew of him. Do you...do you remember meeting Frank at all in the Pen?

JKW: No.

RH: Did you ever see him there, or were you there at the same time, do you know?

JKW: Nope. According to, uh, prison records, uh, I don't believe that Frank was ever in the Penitentiary at all, the same time that I was.

RH: Mokay.

JKW: We were talking about Gary Davis and how, uh, yeah, I knew Gary Davis and how Frank knew Gary Davis and, um, that's pretty much how we even had the, uh, discussion...you know, when you meet somebody...when you meet somebody on the streets that was in the Pen, you have a tendency to say, 'Oh, yeah, I remember

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 3

you; you remember this dude, here?', and that way, if you know the...the people and you know how the Penitentiary is set up, then you can make it so that it's not, um, a set-up, you know what I mean?

RH: Yeah. Ok. And in the transcript it says that was probably around May of '88 you guys met. Um, also that it was at nighttime. Do you recollect that, or does that sound right?

JKW: It...you know the truth of the matter, it could have been daytime, it could have been nighttime.

RH: Mokay.

JKW: It was probably nighttime or evening-time because, um, I lived in Corvallis, worked in Albany and drove to Salem every night. So it had to have been after...it would had to have been after 6:00.

RH: Ok. Worked in Corvallis, lived in Albany...

JKW: No. Lived...

RH: Other way around...sorry.

JKW: Lived in Corvallis, worked in Albany...

RH: Ok.

JKW: That's exactly what they had me saying there, too. Um, I lived in Corvallis, at 1160 NW 16th Street with my mother and my brother, Mickey [phonetic], and my brother Jerry [phonetic], and my brother Kelly [phonetic], and, um, shortly after I moved in, approximately three or four months after I moved into my mom's house, Mickey moved to Colorado, where he still resides. Um, I worked in Albany at, uh, 1600 SW 9th Street, I think, at Cub QP, which is a quick printing place, and I would drive from there to Salem and deal drugs, pick up cash, do whatever it was I was doing in Salem, and then go back to Corvallis, where I did, maybe, or maybe not, get some sleep or rest, and then did the whole thing, ah, the next day.

RH: Ok. You had a regular route that you drove...

JKW: A regular route.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 4

RH: ...each evening after work.

JKW: Mhmm.

RH: Alright. And you explain that in the testimony. Left work in Albany, drove down I5, stopped at houses along the way. Ok. And after you met Frank, you had a continuing relationship with him.

JKW: Yeah, Frank was a pretty good guy. I like Frank. I still like Frank. Though he feels that way about me, I don't know.

RH: Ok.

JKW: Those are two dogs playing.

RH: [laughs] The noise in the background...

JKW: Yeah.

RH: ...yeah. Ok. I'm in a quiet part here. I'm just reading, uh, to myself the, uh, transcript so that I can get to the points that are important to what we're doing. Um, you had continued to go to Russ's apartment and you would meet Frank there. Frank would see your car, and he'd come over to talk to you.

JKW: Yeah, a lot of times, after I...after I met Frank and started selling to him directly, lots of times, I'd just pull in, and, um, go directly to Frank's apartment, sell him whatever it was I wanted...you know...he wanted to buy, or go up there and do...do s...crank with him, um, or you know, smoke pot with him, and then I'd go over Russ, or Russ's would, you know, Russ would go over to Frank's apartment, it was...you know...in a...in a small apartment complex, it turns out to be pretty, uh, close-knit. You see one person pulling in that's a friend of yours, you can go over to their house and visit them as a friend.

RH: Yeah. Ok. You apparently didn't know Dan Walsh, is that right, from testimony here?

JKW: Uh, doesn't sound familiar.

RH: And, uh...

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 5

JKW: Richard Dav...uh, Richard David Welch, also known as "Dallas".

RH: Hm.

JKW: I know him.

RH: Yeah. I think that's a different guy.

JKW: Yeah.

RH: Mark Gesner you had known for several years.

JKW: Yeah, I know him. He was the la...mhm...I was with him the last time I got busted.

RH: Ok.

JKW: We'd just gotten some pot from his brother, who lived on Lancaster at the time. We were followed there, and Mark made a U-turn in the State Police, uh, complex

when it was there on Airport Road and State Street...

RH: Mhmm.

JKW: ...and, at that particular time, it was raining, and I had just crushed my hand, um, on...after working on my truck, and we got busted for pot.

RH: Did you introduce Frank and Mark?

JKW: Um...yes, I believe I did.

RH: Ok. Yeah, you describe in here being followed by some police. Mark made a U-turn, got busted.

JKW: That's in there?

RH: Yeah.

JKW: Oh. Hmm.

RH: You said, 'After that, I hadn't seen him for about a year or so, and then I saw him again at the AM PM.'

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 6

JKW: Well, 'cause Mark got busted in Senora, California, for supposedly bringing up 33 pounds of pot, and my observations of 33 pounds of pot's a federal offence. Well, Mark didn't do any federal time at that time. So...

RH: 33 pounds is a pretty good amount.

JKW: Of skunk bud? Yeah.

RH: Hmm.

JKW: This is the kind of pot that you could have an ounce inside of a house, anywhere inside of a house, and walk in the house and smell it.

RH: Hmm. Ok, then, uh, Mark met you over at Russ's house after you had bumped into each other, I guess, at the AM PM.

JKW: Actually, what happened was, I pulled into the AM PM there on Portland Road right by where the new State Police Headquarters is, and as I was leaving, Mark said, ''Ey,' and I said, 'Hey,' and I told Russ, I said, 'Hey, man, uh, I'm gonna meet you back at the apartment. I'm gonna go take care of some business.' And that's when I got hooked up with Mark gettin' large amounts of crank, instead of having to go to Portland, which is where I was getting it. Now, I'd just go basically across the street and get it. Kept all my traffic in town instead of having to go once a week to Portland, which was a long drive, and, you know, I mean, if you know where Corvallis is, and Albany, and Salem, and, um, Vernonia, which is

ou...up...up towards, uh, Astoria...

RH: Yeah.

JKW: ...that's a lot of driving in a week. And I pretty much cut my Portland connection off, and started dealing with Mark, and that's, uh...huh...when all my troubles began again.

RH: Ok. And it's right here that, uh...

JKW: Mark dropped me off over there, because that's where my car was at.

RH: Yeah. 'Mark ran me over Russ's house to drop a...drop a car off, and Frank came out, and that's how I introduced Frank and Mark.'

JKW: Mhmm.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 7

RH: And it was just like one of those things; 'Hi, this is Mark, this is Frank, you know.'

JKW: Mhmm.

RH: 'We're taking off.' And then the question, ok. 'So during this five or six period... six year period that you have known Mr. Gesner, is that kind of the nature of the relationship you've had with him over those years?' 'Yes.' Ok. And then you anticipated a question. 'And at one point did you introduce them--Mr. Gesner to Mr. Gable?' 'Yes, I did.' So I guess the question there that you anticipated is if you introduced Frank and Mark.

JKW: Correct.

RH: Ok. Did you know that question was gonna be asked?

JKW: Mhmm.

RH: And, uh, how did you know that? Uh, just describe the background of that.

JKW: Um...before I testified in court, I was downstairs with...uh...Tom Bostwick and Sara Moore, and we were talking about the type of questions that would be asked...um...and...uh...the responses; not the responses that I should give, but the responses that I would...um...be...uh...not required to answer, but, th...th...th... the answers that I were [sic] to give were to be consistent with...the...results of the polygraph and the, uh, subsequent...State Police...questions.

RH: Ok. We discussed a little bit before, the last time we talked, uh, the polygraphs. I think you said you had three polygraphs? Is that right?

JKW: Mhmm.

RH: Um...

JKW: The first one, I told...I told the truth, and Fox, I guess his name is, he left and said, 'Ok, just a minute,' and he came...left out, he left the room; about five minutes later, came back in, and said, 'Well, Mr. Walker, I don't believe you've been truthful with me.' It's like, I'm going, 'Man, I've totally told you all the truth that I know.' And that's when he made statements like, 'Well, you don't seem to see... realize how serious this is and, um, if you don't start cooperating, uh, you're going to be standing on the curb with Frank.' Er...n...'Get on the bus now; or stand on the curb with Frank, and you can go down with him,' and it was not

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 8

stated as such, but it was implied to me, or understood by me, that that statement meant that they were going to charge me with an accomplice after the fact, accessory after the fact, namely because they told me the entire thing even started when they came to my house in Corvallis and said that, 'Frank said he was with you the night of the murder.' It's like, huh, 'Bullshit!' Sorry, I don't mean to put that on tape, but it's like, 'No way!' I know where I was...I don't know where I was at the night of the murder, but I do know that I wasn't committing any murder and I wasn't helping anybody commit any murder. I mean, uh, you can ask Frank this, or you can ask anybody else who's been...wired out on crank for days and days at a time, that, um...huh...it...i...i...it's called a 'tweaker's day'. 'I'll be over there tomorrow,' or, 'I'll be over there the next day.' Well, is that a tweaker's day, or is that a real day? Well, a tweaker's day might be four or five days later, you know what I me...all, one d...one day is one day.

RH: Mhmm.

JKW: If you don't sleep, it's all one day. Um...so that was how I got involved in this entire case.

RH: Who was it that first approached you, in Corvallis?

JKW: Um, it was, I believe, Dean Perske, and at the time, I wasn't home, and Dean left a...a...business card with my brother, Kelly, stating that, 'Well, we're here investigating the Francke murder and what Ke...er, what Mr. Walker's involvement is in it and we'd appreciate it if you'd give him...have him give me a call at this 800 number at the State Police headquarters in Salem.' Well, I got home and, needless to say, I was on the phone in about two seconds. Um, you know, I didn't know anything about it, and here I'm being questioned about it?

RH: Ok. So, the police approached you with the, uh...uh, suggestion by them that Frank had told them that he was with you...

JKW: Allegedly told them, yeah. I found out that the police went around telling everybody that Frank said that they were with him that night.

RH: Hmm.

JKW: And from my understanding, through Frank, is that...he didn't know where he was at, at...at the particular time that this happened. So he was, you know, the...the cops might have just been sayin, 'Well, Frank said this...', and it's like, 'Well, what's your...what's your reaction going to be to this?'

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 9

RH: Your reaction was, as you said, 'Bullshit,' because you didn't have anything to do with it.

JKW: I didn't have anything to do with the murder.

RH: Ok.

JKW: There are three things I will never do, and that's rape, robbery or murder.
Guaranteed I will never do.

RH: Yeah. The...the implication, though, is that, um...they're saying, 'Frank said he's with you,' and therefore you're...you may be guilty as an accomplice...

JKW: Correct.

RH: ...where actually...

JKW: Whereas Frank's testimony would be against me! I didn't know, I mean, we were all strung out on crank. I didn't know what the hell was going on.

RH: But if Frank actually was with you, it means that Frank was not involved in the murder.

JKW: Correct, because I wasn't involved in the murder.

RH: But they approached it in a way, apparently, as I'm reading it, approached it in a way that, uh, would get a reaction from you of, 'Bullshit, because I had nothing to do with the murder, therefore I must not...'

JKW: Correct.

RH: '...therefore, I wasn't with him.'

JKW: Mhmm. Yeah, that's exactly right. That's a very good way of putting it.

RH: Hmm. Ok. We're straying away a little bit from, uh, the, uh, transcript, but that's fine. Co...continue and explain a little bit about additional contacts with the police or with, uh...uh, the prosecutors.

JKW: Well, oh, I didn't have any con...c...contacts with the prosecutors until after I was, uh, except for the...the grand jury indictment. [snaps fingers, aside to dog] Go

Roger Harris/John Kevin Walker interview
August 6, 1993

Page 10

'way. Um, my next con...or my contact...initial contact with Dean Perske was... not, because he wasn't there at the office. It ended up where we got...got in touch with each other, and he said, 'Well, can you come in and talk to me?' and I said, 'Well, y...I suppose,' and he said, 'Well, I know you have, um, several outstanding warrants for your arrest.' One of 'em was for burglary in the first degree, one of 'em was for menacing, and one of 'em was for failure to appear on, uh, sentencing for possession of a controlled substance, to wit--methamphetamines. Um, at that time I said, 'Well, I know I have these things ta...you know, but I'm trying to get 'em taken care of.' I knew I failed to appear on the sentencing for the crank charge, but my mom had a heart attack at the time. She went...underwent triple bypass surgery, she was in intensive care for two weeks, um, she was in th...the hospital for an en...an entire stay of over a month. At that time, I was staying home, taking care of my mom; going to the store, picking up her insulin, her insulin needles, her medications, cooking food for her, being basically a live-in nurse for my mom. So I had a few more important things to do than go for sentencing, which I knew I was gonna get probation for anyway. Since it was already plea-bargained out, they're not gonna charge me with anything else except failure to appear. Well, um...I went in and talked to Dean. I s...I said, 'Well, Dean, if I...if... '--at the time, it was Mr. Perske...Officer Perske. I sa...'If... if I have your word that you will not arrest me, I'll come in and talk to you,' and he goes, 'You have my word.' I said, 'Ok, I'm gonna hold you to it,' and he goes 'Ok.' And I'll tell you what, through this entire case Dean Perske never once lied to me. He never once, um, led me astray, he never once did anything other to... other than to...proceed with the investigation at his end. I went and talked t... talked to him. The entire...the entire primary, uh, interview probably lasted forty-five minutes or an hour. Um, he said, 'You're free to go, but I would li...I would like to remind you that you need to get these things taken care of,' and I said, 'I will.' And all the way out the door, man, I'm thinking', 'He's gonna slap those 'cuffs on me,' and he never did. And throughout this entire investigation, he's the only person that I would willingly talk to. In fact, I called him after I was assaulted. I had him called, and sa...and he wasn't even on the case anymore, but he came down and talked to me. And I...have a great deal of respect for that man. Whether he may have screwed somebody over, or not, he never screwed me over.

RH: [inaudible]

JKW: Bill Pierce, on the other hand...he did nothing but lie and connive, and cheat, 'n' steal 'n' rob 'n' everything he could of...nah, he didn't steal 'n' cheat 'n' rob, I'm sure of that, but...huh...he did everything he could to get me arrested and confined where, uh, my uh, my access was...readily available to the State Police.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 11

RH: Go ahead and talk about that. At...at some point, apparently Bill Pierce took over from Dean Perske?

JKW: Yeah, 'cause Dean Perske was off the case. He was only on...on it for a certain

amount of time. And then, I was sittin' at home one night, and got a phone call, and said, 'Hello, is, uh, John Walker there?' and as soon as they asked for John Walker, I knew it wasn't a friend. Nobody asks for me by 'John' except the law, or an attorney, or somebody collecting money or something. So, I said, 'Well, let me check. Oh, ok.' An' I mean, I held it so he could hear it, and it was like, 'Is Kevin here? Oh, ok, he left a little while ago. Ok, he'll be back...ok. Uh, no, he's not here,' and he goes, 'Heh, heh, heh, I didn't think so. Ok, if you'll just tell him Officer', you know, 'Pierce called, uh, I'd appreciate it, and blah, blah, blah,' and I went, 'Ok, I'll do that,' and...prob'ly...hour...maybe two hours later, um, the... cops came and arrested me, at the house.

RH: Hmm.

JKW: And it was like at 11:00 at night, or 10:30, somewhere around there, at night, an' soon as I heard the knock on the door, I knew it was cops. I took my pit bull out back, let him out in the back yard, and there was two cops commin' up behind the fence, and I didn't know who they were, I didn't...they had flashlights. That's all I saw. I didn't know they were cops at the time. And he goes, th...the lady said, uh, 'Mr. Walker?' I said, 'Who is that?' and she goes, 'Mr. Walker?' and I said, 'Who wants to know?' and she goes, 'Are you Mr. Walker?' I said, 'If you don't tell me who you are, I'm gonna turn this dog loose,' and she goes, 'Well, we're the police, and we wanna know if you're John Kevin Walker,' and I said, 'Well, yes I am.' 'Well, we'll...we're...we're here to arre...'...um they didn't say that, 'We're here to arrest you,' but, um, they said, 'Would you please put the dog up?' and I took the dog inside the house, and at the time I got inside the house, the other two officers were in the house, 'cause my mom let 'em in, and...um...at that time, uh, I was placed under arrest, and from then on out, and it was February 6th, I believe, because it was snowing outside, and from that time forward, um...I was incarcerated. I was not...I was not released. Even though the charges that were brought against me were not so severe that I could not have been released. I mean, a menacing charge is...is not that big of a deal. A burglary one, um, was a residence of my ex-girlfriend's house, who, all I was doing was getting my stuff out of the house, and she called the cops, and by the time the cops got there, I was gone, but because she told me to leave, technically, by law, I had to leave, otherwise I was committing burglary. And the possession of a controlled substance, that I had already plea-bargained on, was, uh, just awaiting sentencing.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 12

RH: How long were you incarcerated, then?

JKW: Um, well from February 6th, until...February 6th, 19...90 until...October 31st, 1991.

RH: Ok. So that's, um...

JKW: Well, no, let me see...it was, uh...1990...'91. Ok, it was ni...February 6th, 1990 to October 31st, 1990, and I was released...on parole...to California, even though, at the time, the State law required I be returned back to the county of or...origin.

The county that the crime occurred in was Benton County for the initial charge of menacing, and at that time, the State law required that I be returned back to that county, and they tried to release me back onto Tony Starr's doorstep, in Eugene, which, needless to say, uh, bothered me greatly, and, um...I said, 'Well, no,' and then I ended up in California, maintaining weekly contact with the Distr...District Attorney's office, actually, Jerry Frazier, and, um...that's it.

RH: Mokay. Let's go back to the, uh, transcript, and continue on through that. Um... let's see; you're recalling here in your testimony about, uh, Frank and Mark. You introduced them...

JKW: [inaudible]

RH: ...you'd gone over there t...to drop your car off, apparently.

JKW: Yeah, well, th...in there, there also says that, um, I...sold...Mark and I went and sold a quarter-pound of crank to Robert Cornett and Chris Warilla, um, in the alley behind the Coca Cola plant, and at the time, I stated that Frank Gable was there in the house, and, Frank wasn't in the house. Frank was...I don't even know where the hell Frank was at the time tha...tha...that drug transaction took place.

RH: Ok, is that a d...um, that something that you testified to in here, that's uh, is that a specific date that you recalled, or...

JKW: Um, actually I don't know if that was actually testified to in the, uh, in court, in open court, but I do know that that is in my, um, supposedly accurate, uh, investigation.

RH: Ok. So during that drug deal you said that Frank was in the house, but he was not in the house? Is that right?

JKW: Ah, nah...I don't know where the heck he was at.

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 13

RH: What's the significance of that, and why...did someone want you to say he was in the house, or...?

JKW: Well, because...well because we were talking about how, um, I've seen Frank slam a sixteenth, you know, shoot; intravenously shoot, uh, a sixteenth of crank at a time, and it was at the particular time that Mark and I sold Chris and Robert, um, a quarter-pound of crank. Well...I believe...a person could, if they had a needle big enough, inject themselves with a sixteenth of an ounce of crank, if they'd been up on an extended...an extended high. In other words, like, three...four...five...six...seven...eight...nine...ten days with no sleep at all, your body requires that drug to maintain its...suppressed level of awakesness. Um, if you co...if you could fit a sixteenth into a standard U-100...that would be awful thick syrup. That would be awful thick, and, um, he would have to have been up for days before that kind of drug would not have killed 'im...that amount of drug. A sixteenth, i...i...if you were to shoot a half a gram...if you or I, right now, were

to shoot half a gram of crank, we'd O.D. We would go into ventricular fibrillation and we'd die, and, um, so the significance of w...w...what I just told you is the fact that I told them that Frank...I sho...I saw Frank shoot up a sixteenth of a... of a, uh, ounce of crank. Now, I used to sell dope, and I used to do an awful lot of it, and...to the best of my...experience, a person could not survive a sixteenth of an ounce of methamphetamines injected into them.

RH: So...why...then what was the situation in which you told them that you had seen Frank do the sixteenth?

JKW: [aside to dog] That's 'nough! At the particular time I told 'em this, I was fillin' 'em so full o' shit that you'd have to change the diaper every five minutes. Um, they got me...they changed...they made me change...n...they didn't make me...ok, I don't want to say that. They didn't make me change my initial testimony for the lie detector test. What they did was, they structured it so that...if I did not answer the questions that were asked me...to the best of my ability, whether that be lying... [end of tape]

RH: ...turned the tape over, and we'll continue where we left off.

JKW: ...they were gonna charge me with accessory after the fact. I'd never been inver... involved in a murder investigation. I didn't know what the heck was goin' on. The most I'd ever been involved with up at that time...up until that point, was... granted, it was a Class A felony, but it was a burglary. And all the burglaries I ever did, I commi...I confessed to. We never went to trial over 'em.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 14

RH: So you were in a position that, if someone wanted to intimidate you with, uh, what could be done to you, and...

JKW: Oh, I was in a position to be intimidated. We're looking' at...we're looking' at a murder of a State Corrections officer, the largest invest...the largest, most important murder in Oregon's history, as far as, um, as far as single people go. We're not talkin' about, um, you know, rapes and murders and stuff like that, but we're talkin' about a cop, or a State Prison official, or anything along those lines that holds an immense amount of power, um, yeah, I was definitely in a position to be intimidated.

RH: At the...

JKW: And I was intimidated.

RH: At the point that the police involved you in the investigation, Frank was already the suspect...

JKW: He was a suspect, yes. Actually, I believe he...at...at...at that time, he was the primary suspect. Overlooking the fact that Johnnie Crouse commi...confessed to the, uh, murder.

RH: Ok. So aside from Johnnie Crouse, Frank, at that time, was the suspect, or the primary suspect.

JKW: Mhmm.

RH: Now, incidentally, on a tangent; do you know Johnnie Crouse?

JKW: If he were to walk down the driveway right now, I probably would recognize his face and not be able to place a name with it.

RH: Hmm. Ok.

JKW: A lot to times, when you're dealing dope, you meet a lot of people, and you see a face, and you can recognize a face. I can always place where I've seen a face, but I might not be able to place a name.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 15

RH: Ok. Um...since Frank was already a suspect when you were contacted, obviously, their inquiry towards you was, uh...

JKW: Frank-oriented, yes.

RH: Yeah, Frank-oriented. Um, and you've said that you felt intimidated...by them, by the possibility that they could do something to you.

JKW: Mhmm.

RH: What I read from that, and I don't want to put words in your mouth, but, uh, the implication is that, uh, you, then, wanted to say things that, uh...

JKW: To get my ass out of the fire, basically.

RH: Mokay...which would lead you, possibly, to say things to please them.

JKW: No, not 'possibly' at all. It would le...it led me to say things that were untrue about Frank, about Frank's and my relationship, about the relationship that I know Frank had with other people. Um, all I was tryin' to do was save my own butt.

RH: Ok, and those things, then, that, uh, you said that weren't true, we'll continue through the transcript, and I imagine we'll bump into those things. Are there any that are sticking out in your mind right now that you want to talk about?

JKW: Um...oh, the .357 Magnum. Um, I don't recall ever selling Frank Gable a .357 Magnum. Um, the .357 Magnum that is in question, I sold to somebody else

totally different. Um, Frank never pointed a gun at me, he never, excuse me, he never threatened me with a gun, he never put a knife to my throat, he never did anything to threaten my well-being, or my family's well-being. The only time I ever heard him p...pointing a gun at anybody, it was second-hand, and that was the fact that he supposedly pointed a gut at Paul Farm.

RH: But you didn't witness that, or you...?

JKW: No, I didn't witness it. That's second-hand. That's...for all I know, that's as big a lie as I've told in this entire...the entire case that took place. Not what I'm telling you now, but what I told the police and the courts before.

RH: Yeah. Ok. Let's g...

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 16

JKW: Oh, there were all sorts of cheers and pats on the back when I was done testifying. 'Oh, you were the most credible witness we had,' ah...blah, blah, blah. 'You did a really good job, Kevin.' By this time, the State cops were calling me 'Kevin', not, 'Mr. Walker', or, 'John'.

RH: Hmm. Ok, let's, uh, go back to the transcript and continue on with the points, uh, point by point here. Um, you said you were still associating with Frank in late '88 and early '89.

JKW: Yeah, because I was working at ABC Printing at the time, and I would front dope from Frank, or I would front dope to Frank, and um, if I...if he ever fronted me dope, um, he would be at my work trying to collect the money because he was being pressured, and um, that's...pretty much...I met him a couple o' times when I picked him up when he was walkin' down the road on...on, uh North River Road one time, and he tried to get me to go, uh, rob a house that didn't have anybody living in it, but was growing pot, on Capitol Street. Well, I didn't really want to do it because I didn't trust the situation, and, lo and behold, that house got busted, so, which also led me to believe that Frank is the one who ratted on me and Mark. Now, whether he did, or whether he didn't, that's all in the past, and I really don't care one way or the other if he did or didn't.

RH: Hmm. Ok.

JKW: I'm just gland all that crap's behind me.

RH: Let's see. I'm on page 8160 of the transcript, and, uh, you're talking here about, uh, you've seen Frank inject met amphetamine, and, uh, you discuss the, uh, the sixteenth.

JKW: Mokay, I have never physically, with my own eyes, seen Frank inject crank. I know he did it, 'cause I know he had the outfits to do it with. But I have never personally seen Frank inject methamphetamines.

RH: Ok, well, that is in direct contradiction to what's in the transcript here. It says, 'I have seen him inject it...I have never seen him do it any other way.' Um, but you have...you've actually never seen him inject it?

JKW: No, and the reason I said that was to paint Frank as being a worse character than he really is.

RH: Mokay.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 17

JKW: That's the whole idea behind, huh, this in...behind Mark Gesner's and Michael Keerins', um, investigation. Both of those guys, Michael Owen Keerins, and Mark McLain Gesner, both told me they lied. Both of them flat out told me they lied.

RH: After the trial they told you that, or after their testimony, you mean?

JKW: Um...

RH: What...what...what time?

JKW: No, uh, before the trial, Michael Keerins told me--this is when I was in Marion County Jail with him. He told me, 'Yeah, oh, that's a bunch o' bullshit, you know, I don't think he really did it, and blah, blah, blah. Oh, I'm just tryin' to get myself some easy treatment. You know, they brought me over from Idaho State Penitentiary, and blah, blah, blah, blah, blah.' Well, Mark, after the fact, after... huhm...don't ask me how he ever found out where I worked, but he called up one day and s...at my work, and said, 'I wanna get some printing done,' and I said, 'Well, uh, this is the way we can do it,' and he said, 'Kevin?', you know, which leads me to believe either he found out that I worked there--it wasn't a fluke chance, I don't think--but, anyway, after him and I got hooked up again, um, which, believe me, uh, we're not hooked up now--it just happened to be for a printing thing--um...t...he told me he lied.

RH: Hmm.

JKW: He was expectin' to get better treatment and get time off...of his sentence, 'cause at the time, he was doing federal time.

RH: At the time o' your testimony, you were no longer incarcerated, is that correct?

JKW: Correct. I'd be...I'd been...

RH: So...

JKW: ...brought up from California.

RH: Was there anything hanging over your head at that point?

JKW: Um, parole, and probation.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 18

RH: Were you threatened with any o' that?

JKW: No, but by the same token, if...if I were to go in there, into court, and say, 'Well, I refuse to answer on the grounds that it may incriminate me,' or 'I just don't feel like it,' well, um, how hard is it for a district attorney to tell a P.O., say, 'Hey, man, yank this dude.' He doesn't need any reason to yank me; because I m...I miss an appointment for a report, or, um, I have a dirty U.A., or, someone says they saw me doing something that I didn't do...um, I have lost a tremendous amount of respect for law enforcement after this trial. I mean, cops have a job to do, and there are some good cops, but I, in my own personal opinion, I believe that most cops are pigs, and are out to make a bust and pin it on somebody, whether, um, it's valid or not. If they've got a primary suspect and it seems like a lot of evidence is pointing that way, then they'll make the evidence fit. So, no, I was never threatened with revocation or anything like that, but by the same token, I'd already been assaulted once; had my orbital--my left orbital--fractured, and my zygoma--which is my cheekbone--fractured in two places, um, I'd been in the paper numerous times, um, with false quotes by Steven Jackson, and, all I needed to do was go back to the penitentiary, and, hmh, you know, I might as well just slice my own throat.

RH: Ok.

JKW: So, no, I did not want to go back, and, yes, I wanted to lie, and cheat, and steal, and do anything I could to keep from goin' back.

RH: Ok. Um, you discuss in here what a...a sixteenth is, and the significance, and things like that. I think you've pretty well covered that point. Um, describe for the jury, uh, building up a tolerance to drugs, um...ok, 'Have you ever observed, in late '88 or early '89, did you ever personally observe Mr. Gable carry any knives?' 'Yes.'

JKW: Well, Frank always carried knives.

RH: Mokay.

JKW: Just like some people carry guns. I always carried a .357 s...short barrel pistol with me. Or my .45.

RH: Ok. 'The majority of knives I ever saw Frank Gable with were butterfly knives.'

JKW: Mhmm.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 19

RH: Ok, and that's...?

JKW: Just a standard knife. I mean, you could go down to any...any...any knife store and buy a butterfly knife.

RH: Ok. So that part is true. And, uh...

JKW: Sorry. [laughs]

RH: Hey, you don't have to be sorry for the truth.

JKW: No.

RH: [laughs]

JKW: I know. [laughs]

RH: [laughs] Ok. Um, 'January, '89, were you still seeing Mr. Gable?' 'Yes.' '...nature of your relationship?' 'Selling dope.' Um...'and would Mr. Gable get some of the dope he used from you?' 'Yes. I believe he was pretty much cutting off of me, because, being out and about, it puts you in touch with other people.'

JKW: Mhmm.

RH: 'It's called, "chasing the bag."'

JKW: If I...if I'm...

RH: Ok. [inaudible]

JKW: ...b...if I'm buying...let's just say, for instance, hypothetically, I'm buying dope from you, and I'm over at your house all the time, and your supplier is coming to you, well, sooner or later, I'm going to either be introduced to your dealer, or I'm going to become familiar enough with him that I can just start up a conversation, and not feel intimidated by the fact that he is your supplier...

RH: Mhmm.

JKW: ...and say, 'Well,' you know, 'if, uh,' you know, 'is i...is it cool if I give you a call?', 'Well, no, I'd rather you'd go through my...through my guy here,' or,

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 20

'Well, yeah, that's fine with me; I don't care.' Y...y...you're going to get involved with other people dealing dope.

RH: Mokay. And that was the case with Frank at that point; by early '89 he had met other people for his supply, or...

JKW: Well, yeah, plus he was getting in contact with his...with old, uh, penitentiary buddies, and, I mean...you know...just...when you're not working, you have a tendency to have a lot of free time on your hands.

RH: Mokay. All right. Next you discuss, uh, your job with, uh, Cub Quick Printing...

JKW: Mhmm.

RH: ...and, uh, your schedule there...the job duties...

JKW: If you asked me today what time I started, I could tell ya' I think I started at 8:00 or 8:30. If you asked me what time I got off, I think I got off at 5:00 or 5:30. I have no idea at this point. That's like...h...it was years ago. It's not something that I choose to focus on.

RH: Mhmm. Did you remember at the time of the trial?

JKW: What time I got off, or what time I didn't? No.

RH: Yeah.

JKW: They'd just tell me that I had a phone call from Frank at...what...5:22 or 4:28 or some'n like that, and, um, said, 'You must have talked to him,' but the entire conversation lasted only a minute? Well, if I dial up your...if I dial up your house, and you say, 'Hello?' and I say, 'Is Roger there?'...'Uh, no he's not,'...'Ok, thanks, tell him Kevin called, bye,' you're registered on the phone bill as one minute.

RH: Mhmm.

JKW: Even if you dial the wrong number, it's still a one minute charge.

RH: Ok. So even at this time when they told you that you had telephone conversations, uh, with Frank's phone number, on that date, January the 17th...

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 21

JKW: I could have had conversations with God for all I know. I don't know. I mean...phone rings, I answer it.

RH: Ok.

JKW: If I'm too busy, I don't answer it.

RH: And at that point in your job, you were able to make long distance calls and then you just paid the employer back at the end of the month.

JKW: Yeah. I always paid Gordon back.

RH: Mokay. Ok. So it wasn't unusual that you did have long distance calls, um...

JKW: Placed or received. No, it was not...

RH: Ok...

JKW: ...unusual.

RH: Ok. We come to the, uh, date of your brother's birthday, January 17th.

JKW: Oh, a key factor, huh?

RH: Yeah, talk about that a little bit.

JKW: Well, the fact that I told the State Police that I was at my brother's birthday party on January 17th, 1989, uh, the time of...Mr. Francke's murder, um, at that time, my brother, Mickey, lived in Colorado. He'd already lived there for six months, or so. And if State Police bothered to check alibis, they would have found out that I was not at any birthday party because they would have found out Mickey was in Cor...in Colorado, at the time. Um, I think that's a...just a...just a minor point in my testimony, ya' know?

RH: Ok, [laughs] you're being sarcastic here.

JKW: I'm being really sarcastic, Roger. I'm sorry, but this whole case has just...just pissed me off. I...I have t...I have to tell this because...I feel like I'm totally responsible for putting Frank Gable in prison. Whether I'm...whether I am or whether I'm not, um, whether it's a drawback or whether it's not a drawback, I was th...as far as the 'drug crowd' that they had testify, or investigated, I'm the

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 22

most articulate, the most well-educated, um the smartest of 'em, but, I feel bad about sayin' that about Frank, because none of it was true. Now, whatever Frank did to me, you know, as far as owing me money for dope that I fronted to him, or, um, allegedly, imaginatively being responsible for the bust at 714 Pine Street, all that stuff aside, doesn't deserve a murder conviction. And I told the cops, I said, 'Well, whether he was g...whether he...whether he busted me or not, um, I don't care, I would just rather put his name on the street; "Frank's a rat." Let the street take care of him. Forget the cops. The only thing cops can do is put him in jail.' But I feel bad, I feel totally responsible for Frank being in prison. [dog barks in background]

RH: Ok. Car's coming down the driveway. Shall we turn the recorder off and...is this somebody you need to talk to, or...?

JKW: Oh, this is Ken, my roommate.

RH: Oh, ok. [sound of vehicle approaching in background]

JKW: But, yeah, I'd...probably...but...oh...we can go ahead with this a little bit.

RH: Ok.. Just the point here where you said, uh, 'Frank called u...called me up earlier in the day, and I returned his call'...

JKW: [inaudible] If you'd excuse me real quick...I'd just rather if we...when we start talking about this more after Fra...after Ken goes in the house, I'd rather move up, so Ken doesn't...

RH: [inaudible]

JKW: Ken's not...

RH: [inaudible]

JKW: Hardly any of my friends are aware of what happened.

RH: Alright.

JKW: They just, um, are aware that I was involved in a case.

RH: Oh. I'll turn the recorder off now for a minute.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 23

JKW: Ok. Well, it's a good time to go to the bathroom, then. [tape turned off]

RH: Alright, the re...recorder's back on, we just took a, uh, bathroom break, and, uh, we were talking about, uh, page 8165. Um, 'Frank called, wanted to know if I was comin' into town that night. I said, "Yes, it's gonna be a little...not gonna be until later"...wanted me to come earlier, but,' uh, let's see, 'wanted m...wanted to have me come in early, I told him, I said, "I can't; I have a prior engagement tonight. I won't be in until 8:00 or 9:00."'" Could...do you...

JKW: This is a lie.

RH: ...recall that? Is that...that's a...

JKW: That was...that was to cover my lie to the, um, effect of stating that I was at my brother's birthday party.

RH: Ok. And the brother who actually had a birthday on January 17th, is that right...?

JKW: Michael Lewis [phonetic] Walker...

RH: ...is Mic...

JKW: ...my brother...

RH: ...Mickey, ok.

JKW: ...Mickey.

RH: And he had moved to Colorado previously, so the...

JKW: Mhmm.

RH: ...whole birthday party thing just...it wasn't just that you weren't there; it didn't exist in...

JKW: Hm-m. [negative response]

RH: ...Oregon, at least.

JKW: Sure di'n't.

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 24

RH: Ok. Um...

JKW: Another thing I...they...the police, uh...consistently, every single time I would say, 'No, n...not to the best of my knowledge'...oh, oh boy, don't ever say that to a cop...'to the best of my knowledge'. They don't like that.

RH: Why is that?

JKW: Because, by that statement, you're obviously covering something up, or you're telling the truth, and since they weren't interested in the truth, they were interested in...in wanting to know what it was I covered up. 'What?' 'To the best of my knowledge, the Man i...on the Moon does exist.'

RH: [laughs]

JKW: I mean, I don't know. I've never been to the moon to talk to him. [inaudible]

RH: Mokay. Uh, page 8166 at the bottom, it says, 'Did you, in fact, go to Salem the night of January 17th...

JKW: Mhmm.

RH: 1989...[inaudible]?

JKW: I went to Salem every night.

RH: Ok, and you delivered drugs to your contacts on...

JKW: Mhmm.

RH: ...that date. Mokay.

JKW: There were four main people that I stopped at...a...all the time, and it was a circular route. I'd go down I5, jump off I5, hit Waller Street, go from Waller to, uh, State Street, go from State Street to Hyacinth, go from Hyacinth, to, uh, Independence, and from Independence, go home.

RH: Mokay.

JKW: Every single night.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 25

RH: Alright, uh, the details here, 'What, if anything, do you recall about the night... that night, January 17th, '89, when you were in Salem?' Your response is, 'I left a friend's house over on Waller Street. As I was leaving, I had my scanner,' and you had a Base Scanner in your car...

JKW: I had a Realistic Base Scanner, and a Bearcat Scanner...

RH: Ok.

JKW: ...with a police chip in it. Plus, I also had a hand-held 200-Channel programmable police scanner.

RH: Ok. 'As I was driving, I heard some stuff go down over by the State Hospital grounds. I figured it was a riot, so I said, "Cool, I've never seen a riot," so I was going to drive past. As I was driving down Center Street, there's the State Hospital on this side of the street, and there's all the cop cars on that side of the street, and that's not the same side of the street that the S...the Hospital's on, so something else is going on, so I went over to Paul's house on Hyacinth and Portland...'

JKW: Farm.

RH: ...Road.' Ok, Paul Farm's house.

JKW: Mhmm.

RH: Ok. Did you have any idea what was going on, now, when you saw that, apparently, it wasn't a riot at the Hospital?

JKW: Hm-m. [negative response]

RH: Didn't know what it was?

JKW: Sure wasn't. I didn't know what it was, but, I mean, they kept switchin' back, 'tack one, tack two, please switch channels, blah, blah, blah, blah, blah.' Obviously

all that is on their tapes, on their, uh, dispatch tapes, so...

RH: Ok. The next part is, uh, you explain what a scanner is; that's technical stuff, that...doesn't matter so much to us.

JKW: It's a one-way communication device, basically.

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 26

RH: Yeah. Um...after you drove by the State Hospital that night, you went over to Paul Farm's house, and what did you do at Paul's house?

JKW: Plugged in my Bearcat Scanner, and brought my Base Scanner up...

RH: Mokay.

JKW: ...and listened to it. And at the time, Gerald Ross was there. Garald [exaggerated for pronunciation]...I'm sorry, Garald [exaggerated for pronunciation] Ross. Spelled the same; G-e-r-a-l-d. And Paul Farm, Michelle [phonetic] Graham...I believe that was it, other than myself, over at his house that night, at that time. Now, I don't remember if it was that night, or if it was the next night, or a couple of nights after that, that Neil [phonetic], a guy who lived across the way from Paul, um, came in and said, 'Oh, yeah, man, I'...no, it had to have been...had to have been the next night, or the night after that, because he said that he...he was drinking vodka, and he was shit-faced, and he pulled his Volvo over on the side of the road to get out and take a pee, and when he got out to take a pee, uh, he lost his car, and he tried to find it, and went through these people's back yards...now I mean, how, when y...when you're totally drunk, it's easy to step outside your front door to take a pee, and loose your house.

RH: [laughs]

JKW: I mean when you're that drunk. And he said, well, he went through these people's back yards, and as he was goin' through the back yard, they...there was a dog barkin', and he took off runnin' across the back yard, and he jumped over the fence, and he fell down and, lo and behold, there were five hundred cop cars. And I said, 'Oh, yeah, I remember drivin' past there and all that stuff was goin' on.' And that's after that, and we all knew that it was the murder that took place, or, the 'discovery of the body', I should say.

RH: Mhmm. You say here, 'I got over there'--this is Farm's house...Paul Farm's house--'between 12:35, probably, and 12:50, and left at, uh, probably about 3:00 or 3:30, and drove home.'

JKW: Mhmm, 'cause I always made sure I got home in time to take a shower, feed my dog...get some kind of rest, and...go to work.

RH: Ok. The next question is, 'Did you ever see Mr. Gable that night?' Your answer is, 'Not that I recall.' Do you recall any difference, now, or is that correct?

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 27

JKW: Um, yeah, that was the night that, um...I was over at Frank's house...his apartment...and in there, in his room, was Robert Cornett, and I'd brought Mark Gesner in, and, lo and behold, I found out at the time that I brought Mark Gesner in there, Robert Cornett had ripped Mark Gesner off for eight hundred bucks, and...at that time, I was going to show Frank...a pistol...I don't remember what it was, it was my three-fifty-se...uh, it was my .357. It was a...h-u-u-h...made in Brazil...a Llama? No...begins with a 'D', I think. It's either a Llama or it begins with a 'D'. It was a .357 Magnum, um, with a...police...deerskin holster, and...I reached into my jacket to pull it out, and...Robert Cornett was standing against the far wall, against the bedroom window, and as I reached into my jacket, Robert reached into his jacket, to pull out his .44, and Frank said, 'No...no,' [indicates softly spoken] you know, it was like, 'It's cool,' you know, 'don't worry about it; he's not gonna pull a gun out here,' even though Robert knew he ripped Mark off, and even though Mark...even though I knew Mark knew that Robert ripped him off, he was gonna reach in his jacket, 'cause he thought I...maybe...maybe Robert thought that I was going to pull the same scam on him right there and say, you know, 'Give me your money,' or whatever. And Robert wasn't gonna stand for that. Well, if you knew Robert...huh...huh...he wouldn't stand for his mom getting...havin' lunch...lunch money taken. He's a schizophrenic, paranoid dude. That's my own layman's, uh, diagnosis of him...huh...

RH: Hmm.

JKW: Um, and I showed Frank my .357, and he says, 'Oh, cool,' and blah, blah, blah, and, um, that was pretty much the extent of that, uh, incident.

RH: What time was that...any idea?

JKW: Oh, it had to have been after work and before 11:00...

RH: Ok.

JKW: ...because, um...let's see...to tell you the honest truth, I don't know what time it was. I know it was after I got off work, and I know it was before I heard all the stuff go down on the scanner.

RH: And you heard the stuff on the scanner...

JKW: Mmm...11:45...11:30...12:00, somewhere around there.

RH: Yeah. Close to midnight.

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 28

JKW: Close to the time the body was discovered. 'Cause I had left...

RH: Ok...

JKW: ...hmm...I do not know whose house it was I left, but it was one of two people's; it was either the McCades's [phonetic], who live on the corner of 23rd...twenty... 24th?...23rd and State, (they're the owners of the Duck Inn) or Jimmy Flemming's house on Waller Street. It was one or the other two people's houses, 'cause that was the only two people hou...two people's house at that end of town that I ever stopped at. [snaps fingers] Fog: No! That's my dog.

RH: That's um...so you know you were at one of those houses prior to hearing the scanner, um, so that makes the...

JKW: That means that I was at Frank's house at...I don't know...6:30...7:00...7:30, somewhere around there, left, went to....um...my people's houses over there in that end of town, and then left...

RH: How l...

JKW: ...and...

RH: ...how long were you at Frank's house, or apartment, at that time...that night?

JKW: Mmm...minimum of a half-an-hour, but in the apartment complex, more like, probably an hour or an hour...or an hour-and-a-half, because Frank's apartment was right next to, uh, Russ's, basically. Relatively speaking...

RH: Ok, this...

JKW: ...it was the same.

RH: ...this puts you...with Frank, somewhere, probably, uh, within an hour or maybe even at the time, but sometime between, what...say...6:30 and 10:00, or...

JKW: [inaudible]

RH: ...11:00 in the evening...

JKW: Mhmm.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 29

RH: ...and the murder was somewhere between 6:30 and 7:00...

JKW: Mhmm.

RH: ...at least it...somewhere during the course of that evening, you were at Frank's apartment, and Frank was there, as were...

JKW: In [inaudible]'s house...

RH: ...a couple of other people...

JKW: ...along with Robert Cornett and Mark Gesner.

RH: Did you ever tell the police that?

JKW: No, I didn't remember that. An' all of a sudden, it just came to me. I'm sittin' there, I'm g...oh...and this is like aft...after the trial had taken place, and stuff. I mean, you know, when you're going through a trial like this, you have a tendency to go over in your mind, you know, what's...where you were at, or where you weren't at.

RH: How do you tie that to be the same evening, and how do you know that that, uh, event was the same evening as January 17th?

JKW: Well, let's see, this is August 6th, 1993. I'd say, oh, I've prob'ly had two years to think about it, every single night.

RH: Have you discussed it with, uh, uh, the other people who were there at that time?

JKW: No.

RH: Ok.

JKW: I don't know where Robert Cornett is, and...if he was dead right now, it wouldn't...really wouldn't hurt my feelings at all.

RH: Ok, and Mark Gesner, you said you don't have much contact with...

JKW: Mark Gesner is a flake.

RH: Who else was at the apartment? Was Janyne there?

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 30

JKW: Janyne was there. She's always there. [tape ends]

RH: I'm turning the, uh, recorder on again. This is the second tape, first side of tape two. Um, again, this is Roger Harris with, uh, Kevin Walker, and we were just talkin' about, uh, the events of, uh, January 17th, 1989, and that evening. Ok, let's see, was there more that you were able to say about the evening, now you did see Frank that evening at his apartment. Is there more that you can say about that? Pin down a time, or p...other people, or other things you did?

JKW: No, those ar...that's the only...

RH: Ok.

JKW: I...I know that...I know that, uh, Frank and Robert and Mark were all in the apartment. I know we were in the bedroom. That's where all the, uh, all 'deals' took place. No deals took place in front of Jessica.

RH: Ok. And you had a revolver that you were showin' Frank.

JKW: Mhmm.

RH: Mokay. What did you ultimately do with that revolver?

JKW: I sold it to, uh Paul's step-dad.

RH: Ok. Um, the following day you were at work, January 18th. In your testimony you say, 'Frank called me, I think, a couple times that day.' Um, they asked, 'What was his attitude?' 'At the time, I just thought it was like a real tweaked agitation, "tweaked" meaning he had been up on crank too long; you really need another fix, and you're so edgy and jittery and just on edge.' And you indicated to him that you were coming that night. Can you discuss that a little bit? Is that accurate? Is that what you recall now, or...?

JKW: The only...the only reason that I said that he prob'ly called me a couple of times was because they said they had, uh, records...you know, phone records. Ok, he may have called me. I don't know. And, far as being jittery and edgy, um...when you're...when you're wired on...or on an extended wire, and (that's a term for being high on crank) um...somebody who may or may not be on crank, or may be strung out on crank, or what may sound jittery to you. I don't know; I was working. I mean...

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 31

RH: Mokay.

JKW: I don't know.

RH: They ask specifically, then, if you...saw Frank the evening, the night of January 18th, and if you recall that. You said, 'yes,' you did, at Frank's apartment, prob'ly about 8:00 or 9:00, um, each house is pretty much a general stop, and you'd stay there a certain amount of time. By the time you reach the other end of town, it's pretty much a general time. So that's apparently how you narrowed it down to 8:00 or 9:00. And they ask what occurred at Frank's apartment that night. 'Frank opened the door, took me into the bedroom, which is where all the dope deals and stuff were done.' Um...let's see...I'm skipping, I'm on to page 8173. 'Who-all was in the bedroom?', 'Uh, just myself,' so, just you and Frank, I guess. 'And what happened when the two of you got in the bedroom?' 'Frank asked me if I'd heard the news, and I said, "What news?"'...

JKW: Lie.

RH: ... 'He s' ... Ok, go ahead, just talk about that.

JKW: Hm-m [negative response]... wasn't... Frank never asked me any questions about, 'D you hear the news?' He never said, um, 'Well, I did it... I did Dude Man', um, he never talked about doin' a job on the Corrections Department, he never talked about robbing, um, you know, trying to get some computer discs, or a briefcase or anything like this. Um, at the time, I know Frank was involved in car burglaries because, um, at the time, um, I didn't believe Frank was responsible for m... ripping my mom's car off, you know; the stuff inside my mom's car, but, later, I believed he was responsible for it, because too many things just were strange about it, and then I later found out Kevin Dockin [sic] was the one who ripped off the stuff out of my mom's car, to wit my, uh, Hitachi boom box and my Sears and Roebuck leather jacket. It was a biker jacket.

RH: Ok. So where you s... testified that, uh, let's see, 'I said, "Yeah he got shot, or something," and he said, (meaning Frank) said, "Well, that's not exactly what happened, but it's close enough. I stuck him."'

JKW: That's a lie. Frank never said anything about that at all.

RH: He never said, 'I stuck him'?

JKW: Hm-m [negative response].

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 32

RH: ...never said anything about...

JKW: ...never said a... never said, 'Did you hear the news?' Look a... look a... I... if I was gonna... if I killed somebody, number one, why would I tell anybody that I killed somebody? The only... good witness is a dead witness. Dead men can't talk, ok? Why would I tell somebody, why... if I... if I killed somebody, why would I tell you I killed 'em? Plus, if I didn't kill that person, why would I tell you I killed that person? I mean, just think about it, I mean, tweaked out, or not tweaked out, strung out on dope, or not strung out on dope, why would you tell somebody you killed somebody if you didn't? And why would you tell somebody you killed somebody if you did? Now, granted, Frank and I were good friends and stuff, but, uh... huh... I don't know any friend that's a good enough friend that I would tell 'em that I killed somebody, if I did, or didn't do it.

RH: Ok. Was there any discussion of, uh, the Michael Francke murder at this time?

JKW: You're prob'ly not gonna like this either, but, not to the best of my recollection. It was just some dude that ended up getting' killed. Prison official. Big deal... people get killed every day of the week.

RH: Hmm.

JKW: That's the way I looked at it. I mean, somebody got killed. I feel sorry for his

family, and that's a very unfortunate incident, but, if I didn't kill him and no one I knew killed him, then it really doesn't affect me one way or the other.

RH: So how 'bout this continuing discussion here, the testimony, about his attitude, about, 'It's a real bad drag,' a remorseful-type tone in his voice, um, and then he ended up saying, uh, let's see...wait a second, then, 'The .357 that I had sold him prob'ly two weeks before that, he had it in his hands, and he said, "Don't tell on me, Kevin, or I'll have to kill you and kill your family.'" What...what of that?

JKW: Well, Frank being as he is, being Frank Gable, he's not 'the *mafioso*', he is not, uh, *omerta*, he doesn't have the authority or the ability to kill a witness and his entire family. I mean, we're not talking about The Godfather here. We're talkin' about some guy who's s...strung out on dope, who is supposed to have said, 'Well, if you say...if you tell on me, Kevin, I'll kill you and kill your family.' Gi'me a break.

RH: Did he ever say anything like that?

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 33

JKW: No. He never even had...he never had a gun, that I sold him. I never sold Frank a gun. But I will say this much--if, uh, I told, if...i...i...i...if Frank told me that, and I were to have gone and told somebody, the first person, I wouldn't even... wouldn't even question it, I would never say, 'Well, if you tell on me, Kevin, I'm gonna kill you and kill your family,' because, now you're telling me that you're gonna kill me if I tell on you, so my next move is to kill you. That's my next move. That's to cover my butt. You see what I'm sayin'?

RH: Mhmm.

JKW: I mean, if you're g...if you're gonna do something to somebody, you sure as hell don't tell 'em you're gonna do it, and let them get prepared.

RH: This is really strong testimony against Frank, thought. What...what prompted you to say something that is so incriminating...for Frank?

JKW: Oh, gee, how about the second polygraph, which is inadmissible in court.

RH: Tell me about that.

JKW: The first polygraph that I...that I took, I told the truth. They came back, said, 'No you're not tellin' the truth.' So they said, 'Well, we'll just, we'll...we'll, ya know...just think about it Kevin, relax, it's no big deal, ya know, when you're workin' with us, we'll work with you,' and lo and behold, then, the next time I come down for the next polygraph, after interviews with Dean...or, with, uh, Bill Pierce, I come down and take the second polygraph, and, lo and behold, well, I might be telling a little bit more truth in there, but, I'm still 'leading them astray,' I'm still giving them, uh, what was it...uh...'untruthful statements'. Uh, they don't say, uh, you lie; they say you're telling untruthful statements. Well, what

the hell is that? I mean, uh, i...i...i...if you're not being truthful with me, what are you doing? You're lying to me; you're lying to me. Well, so then, lo and behold, about the s...the s...the s...at the end of the second one, they say, 'Well, you're not being completely honest with us, you know; we really need to have the truth, because this is gettin' really serious, now, Kevin.' Ok. So they take me back to Corvallis, which is where I was housed at the time, and, uh, then they, uh, bring me down a s...the third time, for the last polygraph, and they say, 'Well, we're gonna ask you these questions, and there...we're gonna ask 'em this way, and we want you to be completely honest with us.' Well, I don't think they really even know what honesty is. So, anyway, I told them a fabricated statement, because, if my first one, my first polygraph was the truth and they said I lied, and the second one was partial lies and partial truth, and they still say I lie, well, I figure

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 34

if I...I lie, then the polygraph's gonna say I'm tellin' the truth. Ya see what I'm sayin'? Ya see how I'm...ya know?

RH: How many times were you interviewed by the police regarding this case?

JKW: One...two...huh...I don't know.

RH: Three times you had polygraphs, and...

JKW: Mo...mo...mo...more than four times and less than a hundred.

RH: Ok.

JKW: I really couldn't tell ya. I mean, I can tell ya that if you were to go to Benton County Jail, and Marion County Jail, they can tell you every time that I was taken out of there, because, in fact, uh, s...Teeter [phonetic], one of the guards at the Benton County Jail was quite shocked at the fact that Bill Pierce took me out of the jail without any handcuffs on.

RH: Hmm.

JKW: And Bill's just goin', 'Well, don't worry about it. Um, he's in...he's in my custody now.'

RH: Continuing in your testimony, you describe, uh, you open the bedroom door, there's a table, um, where people sat; 'the tweak table', then you talk about, uh, let's see, there weren't any chairs in the room at the time.

JKW: There was one chair that Frank sat in.

RH: Ok.

JKW: People sat on the mat...on the bed, 'cause the bed didn't have a frame. It just sat on the floor.

RH: Um, and describing the gun. When he opened the door to let you in the apartment, di...he didn't...didn't have the gun in his hands, but then later, he did when he was...

JKW: It magically appeared.

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 35

RH: Yeah.

JKW: He waved his little tweaker wand and it just showed up [snaps fingers].

RH: You describe some things to...the gun, though. It had a black New York Police-style holster, you said...

JKW: No, it was a de...it was a deerskin. They had...it had black Pachmayr grips...

RH: Ok.

JKW: ...which are foam rubber.

RH: So the gun really...there is such a gun, but i...but what about it? I mean, it...

JKW: There was such a gun. I sold it to Paul Farm's step-dad.

RH: Ok. Do you know if that was ever in Frank's possession?

JKW: No. Oh, wa...ok, I take that back. It was in Frank's possession long enough to look at it and say, 'Oh this is pretty nice. I like it.'

RH: When you showed it to him?

JKW: Mhmm.

RH: And then he gave it back to you?

JKW: Mhmm.

RH: Ok. So you are...when you describe this, you were describing a gun that actually existed...

JKW: Mhmm.

RH: ...just...you had sold it to someone other than to Frank, and...

JKW: Mhmm.

RH: ...and on, let's see, we're talkin' about Januaary 18th, aren't we, that evening when

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 36

you had this supposed discussion with Frank? There were no threats? Is that correct?

JKW: No.

RH: There was no discussion of Michael Francke?

JKW: No.

RH: There was no gun involved?

JKW: No.

RH: No confession that he had 'stuck'...

JKW: No.

RH: ...Michael Francke?

JKW: No.

RH: And all of this, then, is just fabricated?

JKW: Mhmm. Pretty good imagination, huh?

RH: Yeah, I have to say, 'Wow!' Um...

JKW: I was covering my butt. 'Cause at the time I still felt Frank was responsible for me and Mark getting busted, and at the time I really didn't care about Frank, and, whatever...whatever he did at the time was his own business, but, my business was keepin' my ass out of jail, for a murder I didn't commit, or an accessory after the fact of a murder I didn't commit, or had no knowledge of. Pretty much, from this point on, anything to do with what Frank told me in the bedroom is...fabrication.

RH: Ok, you...you described in your testimony how Frank, uh, had the gun in his hand. He cocked the hammer back partway and then he could spin the cylinder. Um... 'He was just sitting there spinning it. He was just talking.'

JKW: A lie. Frank never had a gun, so anything that I said that has to do with Frank having a gun in his possession at that time is a lie.

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 37

RH: Ok. So, 'He realized what he had said...this is after he said, "I stuck him"... realized what he had said, and just goes, you know, kind of in a sad way, "I'm

sorry, you know; if you tell on me, I'm going to have to kill you"...

JKW: A lie.

RH: ...""and kill your family."" All right.

JKW: I said, Frank's not The Godfather. He couldn't even be the godfather if he dreamed it. He was just a regular cranker who did time in the same Penitentiary I did.

RH: Ok.

JKW: I mean, if you...if...anoth...another important part of my, uh, testimony is the fact that I said that I wa...I met Frank in prison. If you take a look at prison records, I was never in th...I was never in the Penitentiary at the same time Frank was. So there's no way I could have met him in the Penitentiary.

RH: Ok. All right, then, uh, the testimony continues about how you were concerned about these threats later, uh, I guess I can...just turn pages, because it, uh...

JKW: Mhmm.

RH: ...that just follows up with what you said is just all a lie.

JKW: Mhmm.

RH: This is all nonsense at this point.

JKW: Yeah. So you can look at it and say, 'Page 8177's a lie, and page...ok...page 8167 is a lie, page 8177's a lie...

RH: Yeah.

JKW: Mmm.

RH: Ok.

JKW: Page 8178 has got truth because that...mmm...that's all truth.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 38

RH: That's...ok, where the police contacted you originally at your mother's house.

JKW: Mhmm. Except where it says on line 19, 'I know where I was at the time, and the only reason I know where I was at that night was because that was January 17th. That was my brother's birthday.' Um, that's true, um, except for the fact that, um, I was not at my brother's birthday, because he didn't even live in Oregon.

RH: Ok. 8179, uh, 'What were you afraid of? "One, the people that Frank was hanging around with," it's...the fact of the 'rat jacket'...

JKW: Mhmm.

RH: ...that gets attached to you any time you talk to the police about anything.

JKW: Or you have lying, scum-sucking crap-bags like Steven Jackson, who puts misquotes into the newspaper and structures it to make it seem more goody-goody for him, so he can get all his writing awards, and to hell with anybody he writes about...basically. There's another gentleman I have no respect for at all.

RH: Ok. 'Why did you finally tell the State Police about these conversations that Mr. Gable told you about the murder of Michael Francke? "Because I was in jail at the time and had no way of...of being in my mom's house to protect her."'

JKW: Which is...a lie. Oh...which...which...

RH: You were in jail, but...it...

JKW: ...is true actually. I was...I was in jail and there was no way I had to protect her, but it was nothin' about Frank.

RH: Did you feel your mother needed protection, um, was there some threat there?

JKW: Technically? Um, no. Sure didn't.

RH: Mokay. Then it goes on to discuss what you've been convicted of. The topic of the 'rat label' and the horseshoe up 'side the head.

JKW: Mhmm, the assault. Oh, they sure didn't give me anything, according to line 15, 16, 17, 18 on page 8182.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 39

RH: Mhmm.

JKW: Yeah, they never gave me anything. I mean, the District Attorney wrote on my behalf, uh, a letter, an' I've got a copy of that letter, and basically it says, 'Mr. Walker eats and breathes and sleeps. Please give him consideration in the fact that he does these things.' Huh, no deals; nothin'. No consideration, no promises of a reward, no promises of leniency in a sentence, um, in fact they made sure that I had got my sentence...I was sentenced before the trial.

RH: Ok. So there's a lot of discussion here of how they didn't, uh, promise you anything, they didn't promise you a light sentence or get you off from anything, or...
[inaudible]

JKW: Oh, no, they sure didn't do that.

RH: Ok.

JKW: That was another reason that I testified, was because I figured, well, hey, man, I'm testifying for the cops in a crime that I have no knowledge about in the first place. I figured, well, I'll be able to get out, at least be able to help take care of my mom. I wouldn't end up going to prison.

RH: Mokay. Um, I'm flipping through the pages, now, of, uh, cross-examination, of Bob Abel.

JKW: Bob Abel defending Frank Gable. There's a lot of weird coincidences in that case. Michael Francke [emphasis JKW's] was allegedly killed by Frank E [emphasis JKW's] Gable, who was defended by Bob Abel [emphasis JKW's]. The murder took place on the 17th of January. It took 17 days for the prosecution to rest its case. Lot of weird ironi...ironies there, isn't there?

RH: Ok. I'm looking through these pages. This seems to be mostly discussion of your address and where you lived and things like that.

JKW: Mmm. And my finances because they wanted to know how much money I made, and if I reported it to the, uh, IRS and...

RH: Ok.

JKW: 'List your occupation.' 'Drug dealer.' Yeah, ok, huh, you're gonna report that to the IRS.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 40

RH: Ok, and discussing your business and what methamphetamine is, uh, m...moving through this pretty quickly. I'm not sure what I need to ask you about this. It talks about the scanner.

JKW: Mhmm.

RH: Um...

JKW: We can go to Radio Shack right now and buy a scanner if you want. Same exact scanner I had.

RH: 'Who do you li...who did you live with on Rural Street?' 'Tom Coopman' [phonetic]. Uh, I'm not familiar enough without reading it in detail. Is there any significance in this or is this just some [inaudible]...

JKW: Probably where I initially met Mark Gesner at.

RH: Ok. Ok. Alright, he asks you about, uh, relaxing and...

JKW: Mhmm.

RH: ...you say that...go into a dark room, force yourself to relax, and...this is mostly, just, I guess, the effect of drugs and your lifestyle things...

JKW: Mhmm.

RH: ...your income. Um, Frank Gable with the 'snitch jacket.' I don't know that there's anything I need to ask you, on any...any of that. Um...redirect examination. Again, that's talking, uh...

JKW: About the bust on...on Pine Street.

RH: Yeah.

JKW: Where Frank came in and, um, [to dog] Fog [snaps fingers], two minutes after Frank came in, the house got kicked in, and as soon as I saw Frank in the house, whether it was intuition, or whether it was the fact that Frank actually brought the...the air or the presence, the aura of the police in with him, or what, but as soon as Frank came in, Mark looks at me and says, 'What's goin' on here?', and I looked at Mark and I said, 'We're gonna get busted.' Sure enough, man, two minutes later, the door got kicked in. Actually, the door didn't get kicked in. The

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 41

door got pounded on. They couldn't kick the door in. Mark had to go unlock the door for 'em.

RH: Hmm.

JKW: And Mark told me to flush the dope down the toilet, and, I'm sittin' there goin', 'No, man, what if this is a joke, what if this is a joke, what if this is a joke?' Here I got \$2,000.00 in cash in Mark's hand, I got my TEC-9. That's another thing that they threatened with, was my TEC-9. It's an Intratec 9 millimeter.

RH: Mhmm.

JKW: [to dog] Fog: No!

RH: Go ahead and talk about that.

JKW: Oh, just...that was probably, oh, yeah, actually, that was probably about the second, uh, polygraph, they said, 'Well, we know about the TEC, and we haven't done anything about it up to this point.'

RH: And what could they do about it? You were an ex-con, is that correct, or you were on parole at that time, so you weren't allowed to own [inaudible]...

JKW: Not an ex-con in possession...a felon, I'm sorry, a felon in possession of a firearm, which would have been illegal, and...

RH: Ok. So that's something they could hold over your head?

JKW: All they could do was...but, see, that's the thing, is that they did the exact same thing to Frank. He had no charges against him as far as federal charges, or the gun charges...until this investigation started taking place.

RH: Mhmm.

JKW: And then they charged him with things that they discovered, which, personally, in my opinion, is totally unfair, but who said life is fair? I mean, they should be investigating the murder, not what he did or what he didn't do.

RH: Ok. Were you ever charged with anything related to the TEC-9?

JKW: No.

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 42

RH: Did you feel, at the time, uh, during the testimony, or during the police interviews, that, if you didn't cooperate with them, that that was going to be used against you?

JKW: Yeah, they were just gonna slap another charge on me, make my life more difficult. Throw a consecutive sentence on it, instead of a concurrent.

RH: How did they know about the TEC-9?

JKW: Um...one of prob'ly four or five different ways. It was in the apartment when the door got k...when the door...when we got busted. Um, it was in the bathroom. They may have pulled my fingerprints off of the magazine that I threw into the closet of the bedroom, 'cause when...I'm standin' in the bathroom, ok. Bathroom door is here...bedroom door is here, the little kitchen area is here, the living room's out here, and...I was standing in the bathroom, had the TEC-9 on the bathroom counter. Mokay, the doors are here. The TEC-9 was right here, and this right back here is the toilet and the shower/bathtub. I'm standin' back there with the...the dope in, uh, my hand, and sittin' there lookin' at the damn toilet... 'My god, ah...ah.' So what I ended up doin' was puttin' it in my shirt pocket, grabbed the clip, which was in my back pocket...actually, let me see. Grabbed my clip out of my back pocket, walked out the ba...ou...out the bathroom door, into the bedroom, stepped about two steps into the bedroom, tossed it into the closet, turned around like this...PSHHH...window got shattered. 'P-o-l-i-c-e... d-o-n-'-t m-o-v-e.' They're shakin', man, it is...it was kind of amusing, except when they're shakin' like that, you don't flick 'em any crap.

RH: [laughs]

JKW: And, so, I got down on the floor, on top o' all this glass, an' that's when good ol' Dwayne Hosselbacher [phonetic] came in there and put his knee in my back, 'cuffed me, and, um, took me out into the living...out into the dining room, where I sat, and Janyne had a cast on her arm, and Frank was sitting...he was standing up, and immediately after the...after the bedroom got cleared, they took Frank into

the bedroom, or Mark Gesner into the bedroom, I don't remember which one, but Frank, being cocky as he is, he had a...he had a live .50 caliber round in his back pocket, and they said, 'Oh, you got the gun that goes with this?' and Frank goes, 'Maybe I do, maybe I don't.' And, so, they may have pulled my fingerprints off of the, uh, magazine. However, Mark knew it was mine; Frank knew it was mine; Janyne knew it was mine; uh, a guy named, uh, Floyd...he was an...in during... he was in the bust, Floyd knew that the gun was mine, um, and...I think that was it--in that house. So any one of 'em could have told 'em that it was mine. Or during their investigation they could have asked several other people, 'Well, do

Roger Harris/John Kevin Walker interview

August 6, 1993

Page 43

you know about...do you know about any guns that Mr. Walker had?' 'Well, yeah, he had...he had, uh, an M-16, he had an AR-14, uh, or an AR-15, he had a .45 caliber semi-automatic pistol, he had two .357 Magnums, um, he had a TEC-9,' um...

RH: Hmm. Ok. Um, do you have any more comments that you wanna make? I'm out of questions at this point. Is there anything else you think of that you wanted to discuss that I haven't [inaudible]...

JKW: The only thing I really have to say is that I've lived with the lie that I told about Frank for too long now, and...Frank, being all the things that he is, or all the things that he was, he is still my friend, I still like Frank, and he has no reason to be put through something that is not his responsibility.

RH: Has he ever given you any reason to think that he killed Michael Francke?

JKW: No. None. None.

RH: Mokay. Um, if I think of some more specific questions, can I contact you again?

JKW: Mhmm, you can call me or...

RH: Alright.

JKW: ...we can go for another interview or somethin' like that; I don't care.

RH: Ok. Well, I will shut off the tape recorder here in a second. Today is August 6th, 1993. It must be about, what, 7:15...does that...?

JKW: H...no, try, uh, 8:05.

RH: 8:05? Ok.

JKW: Mhmm.

RH: W...I didn'...I never mentioned what time we started talking so I...I don't know.

JKW: Mmm.

RH: It must have been around 6:00.

Roger Harris/John Kevin Walker interview
August 6, 1993
Page 44

JKW: It was prob'ly around 6:00, because, uh, yeah, it was around 6:00.

RH: I don't wear a watch, and, so, I don't...I don't know exactly, and I don't know that that's significant, but...

JKW: How are you supposed to meet your contacts, then?

RH: [laughs] I have a clock in the car.

JKW: [laughs]

RH: Ok. I'll turn the tape off.

JKW: You mean they didn't steal that? [tape turned off]

E. R. -297

Affidavit of Daniel Patrick Walsh

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

**AFFIDAVIT OF DANIEL PATRICK
WALSH**

STATE OF OREGON)
) ss.
County of Lincoln)

I, DANIEL PATRICK WALSH, being duly sworn, hereby depose and state as follows:


1. I testified as a material witness for the prosecution at the trial of Frank Gable (*State of Oregon v. Frank Edward Gable*, Marion County Circuit Court Case No. 90-C-20442).
2. As I testified at trial, I met Mr. Gable in late January 1989 through a neighbor, Randy Studer.
3. Between 1989 and 1991, I was a heavy methamphetamine user. In fact, I was high when I was questioned by police and when I was given multiple polygraph exams. I do not recall whether I was high during my trial testimony; however, at the time of the trial, I was still using drugs. As of today, I have been clean and sober for over ten years.
4. When I was first interviewed in September of 1989, I truthfully told the Oregon State Police investigators that Mr. Gable never mentioned anything about the Michael Francke murder to me. However, in March of 1990, I was subjected to several consecutive days of aggressive

Daniel

police questioning and several polygraphs. At first, when I tried to maintain my earlier true statements, the police yelled at me and said that I was lying and that the polygraph results showed I was lying. The police asked me questions about topics I knew nothing about. I felt that the police were trying to brainwash me. I felt extreme pressure to incriminate Mr. Gable. Eventually, I told the police what I thought they wanted me to say: that Mr. Gable had confessed to me the details of the murder. My use of methamphetamine affected my ability to resist the pressure police officers put on me to incriminate Mr. Gable.

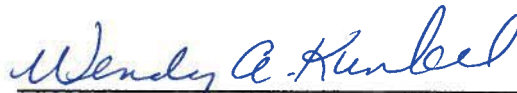
5. Thereafter, at trial, I testified that Mr. Gable confessed killing Michael Francke to me on two occasions. Mr. Gable never confessed to me. Mr. Gable never threatened my family or me. Mr. Gable never said anything to me about breaking into Michael Francke's car, lunging at him, stabbing him, or running away afterward. I do recall an incident where I was throwing a knife against a tree when Mr. Gable approached me and joked that he had used the knife to kill someone. Mr. Gable did not say anything about Michael Francke at that time. Mr. Gable was clearly joking. I did not take him seriously when he made this comment. Moreover, at the time of this conversation, we were both high on methamphetamine. Because of my history, I know that when a person is on drugs, everything is exaggerated. It is easy to misinterpret or misunderstand what people are saying to you.
7. I received benefits for my testimony. The State paid for me to travel between Oregon and Ohio; I was provided a hotel and food while I assisted with the investigation; I was given immunity for past and present crimes; and charges pending against me in Ohio went away.
8. I recall that Frank Gable's attorneys only asked me a handful of questions on cross-examination. I do not believe the lawyers asked me the right questions.




DANIEL PATRICK WALSH

SUBSCRIBED AND SWORN to before me on Aug 3, 2011.




Notary Public
My Commission Expires: 6/26/2012





E. R. -301

Affidavit of Cheryl Lowery

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

AFFIDAVIT OF CHERYL LOWERY

STATE OF OREGON)
) ss.
County of Polk)

I, CHERYL LOWERY, being duly sworn, hereby depose and state as follows:

1. I testified as a witness for the defense of Frank Gable in *State of Oregon v. Frank Edward Gable*, Marion County Circuit Court Case No. 90-C-20442.
2. I first met Frank Gable and his wife, Janyne Gable in 1989 when my husband, Dan Walsh, introduced me to them.
3. For approximately one month during the Summer of 1989, the Gables stayed with Dan, myself, and our two young daughters at our home in Salem, Oregon. At the time, I was pregnant with my son, who was born on August 31, 1989.
4. Dan Walsh never told me that Gable confessed to murdering Michael Francke. Dan also never told me that Gable threatened him or that he was scared of Gable. Had Dan felt scared or threatened by Gable or had Gable admitted to being a murderer, Dan would not have let

Gable stay with our family and spend time with our young children.

5. While the Gables stayed with us, I saw Janyne frequently get aggressive and physical by hitting and scratching Frank. I also saw her try to provoke him. I never saw Frank hit Janyne, nor did Janyne ever tell me that Frank hit her. I observed Frank be patient with Janyne, and saw him just walk away when she tried to provoke him. During this time, I never saw Frank with a weapon.
6. At the conclusion of the month during which the Gables were our house guests, Dan and I drove Frank Gable (and perhaps Janyne as well) from Salem to Coos Bay, Oregon because Frank needed to appear in court there. We expected that Frank would return to Salem with us, share the driving, and pay for gas. However, Frank decided to stay in Coos Bay. Dan and I returned to Salem on our own. On the return trip, our car broke down. Frank did not pay for gas for our return and did not come to our aid when we broke down.
7. I did not use drugs, although Dan did. In fact, although we had been together for six years and had three children together, by the end of 1989 Dan and I broke up, largely due to his significant use of drugs (methamphetamines). In January 1990, I bought Dan a one-way bus ticket to Ohio.
8. In March 1990, the State of Oregon paid for Dan to return to Oregon to meet with detectives investigating the Francke murder.
9. Prior to Gable's criminal trial, I was questioned numerous times by the Oregon State Police. The Oregon State Police came to my home and to my workplace. I was also questioned at a police station, where I was left in a locked room. They spoke to me so many times that I felt that I was being harassed. Each time, I told the police the truth, which was that I could not confirm Dan's statements implicating Frank Gable in the murder of Michael Francke, and that

- I had no reason to believe Frank Gable was involved in the murder of Michael Francke. The police threatened to have me charged with accessory after the fact and with going to prison if I did not cooperate. I felt that the police were trying to scare me into changing my story.
10. In 1991, prior to Gable's trial, I provided information that would have cast doubt on the credibility of Dan's testimony to an investigator working for Gable's defense team. However, defense counsel did not ask me about this information at trial. The information is contained in two reports of the 1991 interviews of me. Gable's current attorney and investigator showed me these reports. I have signed a copy of each report to indicate that I have reviewed it. The reports are attached to this affidavit at Appendix A. The reports are accurate with the following two caveats. First, I do not recall my daughter being shown a picture of Randy Studer, although this could have happened out of my presence. Second, I was not particularly close with Janyne Gable.
11. Years after he testified for the prosecution at Gable's trial, Dan Walsh admitted to me that he lied during his testimony and falsely implicated Frank Gable in the murder of Michael Francke. I asked Dan why he lied. Dan Walsh told me that he lied and implicated Gable in the Francke murder because he was angry with Gable. In particular, Dan was angry because he felt Gable took advantage of us when he lived with us and had us drive him from Salem to Coos Bay at our expense.
12. Dan Walsh also received benefits for his testimony, including that the State paid for his travel between Ohio and Oregon.

[INTENTIONALLY LEFT BLANK]

Sheryl Lowery
CHERYL LOWERY

SUBSCRIBED AND SWORN to before me on August 3, 2011.

Wendy A. Kunkel
Notary Public
My Commission Expires: 6/26/12



E. R. -306

APPENDIX A

WITNESS INTERVIEW REPORT (#3)

ATTORNEY: Bob Abel

CASE: State vs. Gable, Frank

INTERVIEWED: Cheryl Lowery

On 5-31-91 this investigator contacted Cheryl Lowery at her residence. I told her the time and date of her appearance. I had her review her typed statement of 3-7-91. She agreed with its contents and signed the report.

Cheryl then made the following statements which I wrote in long hand. She reviewed my handwritten report and signed it. The following is a typed version of the statement.

5-31-91

Dan and Frank agreed that; Dan, Cheryl, [Janyne] & Frank [plus the kids would go Coos Bay.] Dan & Frank said to Cheryl that they went there to take Frank to court. They took him right to court and waited for Frank there. Janyne & Frank shared the driving. Everyone talked about Frank coming back to Salem.

Janyne was to stay in Coos Bay. It was Cheryl's understanding that Frank had a court date in Salem in a couple of weeks and he was coming back for that.

Janyne was whining and didn't want Frank to go. She told Frank that Dan & Cheryl could make it on their own. [back to Salem]

Dan was angry because Frank wasn't coming back to Salem as planned.

Frank was supposed to drive and pay for the gas.

Dan's licence was suspended and Cheryl didn't have a licence.

Frank had an expired licence, but they discussed that if they were stopped, Frank would only get a ticket for a suspended licence while Dan would probably get arrested for driving while suspended.

They also discussed that it was Frank who wanted to go to Coos Bay so it should be him that gets the ticket.

Cheryl didn't even want to go but Dan talked her into it saying, "lets go down and spend the day at the beach, we will just go down and come straight back".

Cheryl doesn't believe that Frank threatened Dan's family. She said, "If you would have seen how Frank played with the

Cheryl Lowery

6/4/91

kids, they really liked him".

Cheryl said that Frank did more for the kids than Dan did during the time Frank stayed at their house.

She also feels that Dan didnt show any signs of being nervous about Frank being there at all. [She also added, but is not in the report: "He and Frank were getting along and laughing together"]

The only time that Cheryl saw that Dan was nervous was when he didnt have any drugs.

She also said that, "If Dan was so scared why did Dan leave Frank alone with the family".

Sheryl Lowery

WITNESS INTERVIEW REPORT (3)

ATTORNEY: Bob Abel

CASE: State vs. Gable, Frank

INTERVIEWED: Cheryl Lowery
478 N. Picture
Independence, Or.

On 3-7-91 this investigator contacted Cheryl at her residence. She stated that she was surprised that Frank was accused of the murder. Of all Dans friends he seemed the most level headed. He was polite and had manners. He seemed like the kind of guy that nothing bothered him.

Cheryl was with Dan for about six years before they broke up. The reason they broke up was, "you might say he wasn't the same person that I knew when we met". Dan didn't do drugs when she met him and he started doing them when they moved to Salem and he changed.

Cheryl stated that they lived on Hines in Salem. They lived near Randy Studer. Cheryl stated that she doesn't like Randy because he molested her oldest child, Valarie.

The police came to their residence and told her about the molestation. [They showed a photograph of Randy to Valarie who got real scared.] Valarie was going to have to testify but apparently Randy made a plea bargain on another case and this case (Valaries) was dropped.

REVIEW POLICE RPT: 9-16-89

Page -3: Cheryl agreed with the statement about Frank getting up early in the morning and leaving. She stated, "some times he was gone but a lot of times he was there". "Dan would leave the house also."

Cheryl stated that she agreed with the statement that Dan did not have the type of relationship where Gable would have told him about any crimes. However she did agree that she didn't know what Dan did when he left to do his drugs. She never actually would see him doing drugs. He would do them away from home and later on he would go into another room and do the drugs.

Cheryl stated that she recalled when Frank had a fight with Randy. She never actually saw it but she saw Randy after. It looked like Randy lost. He looked like he was definitely in a fight and he was holding his ribs. At this time they were living on Hines. She didn't know Frank until they moved to 14th street when Dan brought Frank and Janyne home.

Cheryl Lowery

When Frank was staying with them he didn't have a car. Dan owned a blue Toyota. Cheryl never went anywhere with Dan or his friends. Dan would go off and do his drugs and Cheryl was down on drugs. Dan certainly didn't want her around. Dan saw Randy a lot more than anyone else. It seemed like Dan was at Randys of Randy was at Dans.

Cheryl was working a Exec. Lodge Motel as a maid.

Frank and Janyne lived with them about one month. Cheryl states that Janyne was the hitting aggressive type. She would get physical hitting Frank. Cheryl never saw Frank hit her, nor did Janyne tell her that Frank hit her. Cheryl felt that Frank was patient with her. He would say things like "Dan get her away from me. She never saw Frank punch or push Janyne down. However she did see Janyne "provoke the heck out of Frank". She would "hit and scratch him". She said that she would just see Frank walk away. Cheryl remembers they had one argument over something stupid.

Cheryl felt comfortable with Frank. She even asked him what she should do with Dan. Frank told her that he didn't know what to say. He told her to talk to Dan.

Cheryl states that she agrees with the report that Janyne was a snub nose. She didn't seem to fit in that area. She saw Janyne with a knife. Janyne showed it to her one time. She never saw Frank with a weapon.

Cheryl stated that Dan never told her that Frank had said anything about killing Francke. She felt that he would have told her. She did comment that Dan might not have told her if he felt the family was threatened. She continued that it seemed odd that if Dan was really threatened by Frank that he would allow Frank to move in with them.

No further information at this time.

Cheryl Lowery

E. R. -311

Affidavit of Earl Francis Childers

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

AFFIDAVIT OF EARL FRANCIS
CHILDERS

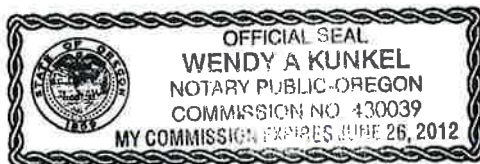
STATE OF OREGON)
) ss.
County of Lane)

I, Earl Childers, being duly sworn, depose and state as follows:

1. I testified that I saw Frank Gable driving his car on "D" Street in Salem on the night of the Michael Francke murder. While I am certain I saw a car that I believed was Gable's car, it could have been a similar car. Many cars look alike. I am not certain that Gable was in the car that I saw. The night I saw the car it was rainy and cold.

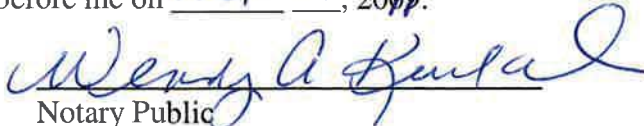
2. Gable told me not to tell anyone that I had seen him near "D" Street after he had been interrogated regarding the Michael Francke murder. Gable never told me that he killed Michael Francke.

3. I was pressed (or pressured) by the Oregon State Police. They were angry when I wouldn't tell them what they wanted to hear and when I refused to take a polygraph. They made me call my attorney in front of them and didn't give me any privacy




EARL CHILDERS

SUBSCRIBED AND SWORN to before me on 12/8/11, 2009.


Notary Public

E. R. -314

Affidavit of Michael O. Keerins

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FRANK E. GABLE,

No. 07-CV-00413-AC

Petitioner, AFFIDAVIT OF

vs.

MICHAEL O. KEERINS

MAX WILLIAMS,

Respondent.

STATE OF FLORIDA)
) ss.
County of WALTON)

I, Michael Keerins, being duly sworn, depose and state as follows:

1. Frank Gable never confessed to me that he murdered Michael Francke.
2. I told the Oregon State Police and the Grand Jury that eventually indicted Frank Gable for Mr. Francke's murder that Gable confessed to me while we were housed together at the Marion County Jail in 1989. This was untrue.
3. At the time I was concerned that the police might focus on my brother Kns Keerins.

Page 1 of 3 : AFFIDAVIT OF MICHAEL O. KEERINS

4. The police had released information that Frank Gable was a snitch for Kelzer P.D. The media had publicized this information. As a result, I, and others, made up stories implicating Frank Gable, even though the stories were untrue.

5. We set up Gable to protect others.

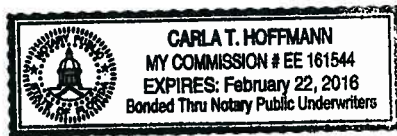
6. As a result of providing information implicating Gable, I was transferred from an Idaho prison back to Oregon, which was very important to me.

7. Jodie Swearingen and Cappie "Shorty" Harden both told me that they falsely implicated Frank Gable in the murder of Michael Francke.

[INTENTIONALLY LEFT BLANK]

Michael Keerins
NAME:

SUBSCRIBED AND SWORN to before me on March 7, 2012.



Carla T. Hoffmann
Notary Public
My Commission Expires: 2-22-16

E. R. -318

Affidavit of Michael O. Keerins

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FRANK E. GABLE,

Petitioner,

vs.

MAX WILLIAMS,

Respondent.

No. 07-CV-00413-AC

AFFIDAVIT OF

MICHAEL O. KEERINS

STATE OF ~~OREGON~~ ^{FLORIDA})

County of ~~Marion~~ ^{WALTON}) ss.

I, Michael Keerins, being duly sworn, depose and state as follows:

In January 1989, Doug Scitcheffeld told me that he
stabbed a man at the Dome Building earlier that
night. The following day, I learned that Michael
Francke had been stabbed at the Dome Building that
night.

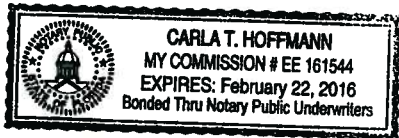
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[INTENTIONALLY LEFT BLANK]

Michael Keern
NAME:

SUBSCRIBED AND SWORN to before me on March 7, 2012.



Carla T. Hoffmann
Notary Public Carla T. Hoffmann
My Commission Expires: 2-22-16

1 MR. HADLEY: Maybe I made it about three
2 parts, Your Honor. Maybe I could start over.

3 My question would be: Did he take advice from
4 his investigators?

5 THE COURT: I'll overrule it. You can answer
6 that.

7 THE WITNESS: Well, I don't know I was giving
8 him advice. It may have just been a suggestion, is all I
9 remember.

10 Q. (BY MR. HADLEY) Did you and he get along well?

11 A. I believe so, yes, sir.

12 Q. And did you give him information about the
13 investigation that you were doing?

14 A. Yes, sir.

15 Q. Did he utilize that in court, to your knowledge?

16 A. I wasn't in court a lot during that time, so I
17 didn't really see who the witnesses were, who he was calling.

18 Q. Can you tell us, were there any certain parts of
19 the investigation you worked on more than others?

20 A. Boy. Well, I did a chronology of events. Then I
21 did an investigation of the eight or ten or so people who had
22 confessed to the crime. Then I had -- I did the Dome Building
23 model thing and the investigation of locating the witnesses who
24 were in and around that Dome Building area within 10 minutes or
25 so of the event happening. Then I located the witness who had a

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I directed the Appellant's Excerpts of Record Volumes I, II, III, IV, V, VI, & VII to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman

BENJAMIN GUTMAN

Solicitor General

benjamin.gutman@doj.state.or.us

Attorneys for Respondent-Appellant
Max Williams

BG2:bmg/9776846

No. 19-35427

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK E. GABLE,

Petitioner-Appellee,

v.

MAX WILLIAMS,

Respondent-Appellant.

APPELLANT'S EXCERPTS OF RECORD VOLUME III

Appeal from the United States District Court
for the District of Oregon

FREDERICK M. BOSS
Deputy Attorney General
BENJAMIN GUTMAN
Solicitor General
1162 Court St. NE
Salem, Oregon 97301-4096
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Attorneys for Appellant

APPELLANT'S EXCERPTS OF RECORD VOLUME III

Pursuant to Circuit Rule 30-1.7, appellant submits the following Appellant's Excerpts of Record, as indexed below.

INDEX

<u>Clerk's Docket #</u>	<u>Document</u>	<u>E.R. #</u>
55-2 through 56-1	Transcript excerpts from state criminal proceedings	322

1 Johnny?

2 A (Nodding in the affirmative)

3 Q Who were you referring to when you

4 Johnny?

5 A I'm referring to Johnny Lee Crouse.

6 Q A suspect in this case, right?

7 A Yes.

8 Q Matter of fact, he confessed, didn't he?

9 A Yes, he did.

10 Q That is all I have at this time, Your Honor.

11 Thank you.

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REDIRECT EXAMINATION

1
2
3 BY MR. BOSTWICK: Is it true that this Johnny
4 Crouse's confession couldn't be corroborated in any way,
5 could it?

6 A No, it could not.

7 Q He subsequently recanted that confession, isn't
8 it true?

9 A Yes, he did.

10 Q Do you know Michael Keerins? You said --

11 A I don't know him. I met him one time in the
12 Marion County jail.

13 Q What does he look like?

14 A He has very long straight blonde hair, blonde
15 mustache. He is average build. At the time I saw him he
16 was a little heavy.

17 Q And the later portion of your interview, at
18 least from what you have testified so far, Mr. Gable
19 indicated he wasn't sure he was with Kris Warilla?

20 A Later on in the interview, yes.

21 Q Okay. Early on like page six of the transcript,
22 did he indicate that he was positive he was with Kris?

23 A Yes. He said he was sure and he was positive he
24 was with Kris on the night of January 17th, 1989.

25 Q I know I was there?

DIRECT EXAMINATION

BY MR. BOSTWICK: Good afternoon, Detective Ackom?

A Good afternoon.

Q Did you, on the the 3rd of November, 1989, participate in an interview of the defendant, Frank Edward Gable?

A Yes, I did.

Q Where did that interview take place?

A That interview took place in the Coos County jail. In an interview room there at the jail.

Q And why were you there?

A (No response)

Q Why were you there?

A We were there at Mr. Gable's request. He had called the State Police in Salem, the headquarters, and asked for Paul Bain and anyone else that was on the 9/15/89 interview to come down. He had some information that he had to tell us.

Q I'll ask you to keep your voice up, if you would, please.

Prior to your interview of Mr. Gable, did you advise him of his constitutional rights?

A Yes, I did.

1 Q And how did you do so?

2 A I advised him of his constitutional rights.

3 Q Did you use a card?

4 A Yes.

5 Q I would like the witness shown what has been
6 marked state's exhibit number 420.

7 Do you recognize that, sir?

8 A Yes, I do.

9 Q Can you identify it for the record?

10 A This is the card that is the rights that I read
11 to Frank Gable dated 11/3. Time, 4:47 p.m., signed by Frank
12 E. Gable and me, Frederick E. Ackom.

13 Q Did he indicate that he understood his rights?

14 A Yes, he did.

15 Q He signed the card?

16 A Yes.

17 Q Okay. Voluntarily talked to you that particular
18 day?

19 A Yes, he did.

20 Q I would like that card, exhibit 420, shown to
21 defense and move that it be admitted into evidence at this
22 time.

23 MR. ABEL: No objection. No objection.

24 THE COURT: Be admitted.

25 MR. BOSTWICK: Detective Ackom, it's my

1 understanding during the initial portion of the interview an
2 hour or so, you and Detective Bain were with the defendant?

3 THE WITNESS: Yes.

4 MR. BOSTWICK: And then Detective Bain left the
5 room?

6 A Yes.

7 Q For a period of time?

8 A Yes.

9 Q Were you were alone then with the defendant?

10 A Yes.

11 Q Could you tell us about the conversation that
12 you had with the defendant, Frank Gable, after Detective
13 Bain left the room?

14 A Yes. I was talking to Frank Gable. I told him
15 that we were -- back in September, about two months ago and
16 I had told him about the volume of people that we had been
17 talking to. We talked to countless people. Everywhere we
18 go, it seemed to point to him. That we can't seem to get
19 off of him.

20 MR. ABEL: Excuse me, Your Honor.

21 I can't hear you. Can you speak up just a little bit,
22 sir?

23 THE WITNESS: Yes, sir. I told him that back in
24 September when we were down at -- approximately two months
25 ago, that we had talked to a volume of people about him, we

1 talked to countless people, and that everywhere we went, it
2 seemed to point to him. Every direction we went kept
3 pointing to him. He said, "You have fourteen suspects." He
4 says, "I'm not worried. I know I haven't done the crime.
5 God knows I haven't done the crime. I got a lot of friends
6 that know I haven't done the crime. I have got five or six
7 witnesses that -- the story that this guy, Keerins, is
8 telling you is not true. It's a lie. He has gone through
9 all of this stuff with his attorney. He has got friends out
10 on the street that will tell you that this guy, Keerins, is
11 a liar." I said, "What if we end up with fourteen people
12 that are telling us things about you, Frank?" And he said,
13 "I have only talked to maybe two or three people. I have
14 talked to my wife, Janyne, Penny Farrow, Kris Warilla, I
15 haven't told them that I did it. I didn't tell them that I
16 knew who did it. Ever since I heard about Michael Francke
17 being killed or read about it in the newspapers, I never
18 told them that I did it or I knew who did it." He said, "I
19 might have made some stupid statements. I might have been
20 involved in some funky statement that may have been
21 perceived wrong. But, you know, if -- anything I can do to
22 help you to clear this up, that would help you with this
23 investigation, maybe help you find the killer, I want to do
24 that." I said, "We're here because you called us. We're
25 here to establish what you were doing the night of the 17th

1 or -- that night." And he said, "I would love to tell you I
2 was with this person or I was with that person and there
3 were fifteen people around and it was at exactly 7:30 or
4 eight p.m. there were all these people around, but God may
5 strike me dead for lying, I'll go to hell for lying." He
6 said, "I would love to get up on the stand and say, yeah, I
7 was with Kris. I am positive I was with Kris. I can't say
8 that. I'm not going to say that." I said, "Well, Frank, if
9 you asked me where I was on the 17th I probably couldn't
10 tell you, no, but if I was around the State Hospital grounds
11 and I heard about a murder, murder, that would trigger
12 something in my mind." And he said, "Well, it would or it
13 wouldn't." He said, "I was going through a period of time
14 where I was trying to change my life, I wasn't interested in
15 following up a murder that I wasn't involved in." He read
16 in the paper about the case. He understands Michael Francke
17 had kids. He first -- there was a little back and forth
18 here, he grieves for people, and then, I don't grieve for
19 nobody. But he says, I feel bad, somebody dies. He goes
20 right on into "I could see if I were the killer I would be
21 covering my tracks. In other words, I would be giving you
22 an alibi. I would be telling you where I was." But he
23 can't do that.

24 And I say, "We basically have been talking about
25 people," I said, "what about physical evidence?" He says,

1 "I figure if you had physical evidence you would be charging
2 me. There would be a charge coming down by now. There is
3 not, there never will be physical evidence." He said, "I
4 would love to help you guys. I never made the statement I
5 killed this guy. I admit I know what happened in my
6 beliefs." And he went on to explain that to me. "That, you
7 know, there was a bunch of people sitting around, you're
8 telling your story, and they tell their story and they say I
9 know what happened, you say no, that's not what happened, I
10 know what happened, and I tell them my opinion of what
11 happened in my beliefs." And he said he has done that with
12 several people. I said, "You have had a lot of time to
13 think about it. What do you think had happen?" He said, "I
14 can lean on the side of the prison corruption a little bit
15 because I understand that the family bought a gun or they
16 were practicing or shooting a gun or something right before
17 the murder." I said, "Well, there is several scenarios to
18 consider." And I laid out basically three scenarios. "I
19 said, there is the scenario of a conspiracy type thing,
20 planning, plotting a murder. Robbing him. Someone trying
21 to jump in his car. There was a struggle, a schuffle, you
22 know, trying to put him down, somebody gets stabbed." And
23 he says, "The car thing, it just doesn't fit. Whoever did
24 this, in my opinion, the car thing just doesn't fit." He
25 said, "I have seen the aerial photo he is talking about, an

1 aerial photo that he had seen, and it's a good distance from
2 the Dome Building to the car. What would it take for
3 someone to just jump in there and take whatever he wants and
4 be out of there?" He said, "The car thing doesn't fit. I
5 don't do car burglaries myself," he said. I said, "If you
6 did it, could you tell me you did it?" "Sure, I could. I
7 would -- I would have to because I have laid here and
8 thought about it." And then he starts to cry and then there
9 is, again, a mixture of he is -- he says he is grieving for
10 his wife. I asked him what is bothering him, and he says,
11 "I'm grieving for my wife." And we all, you know, up to
12 this point we had been talking about the murder. He says,
13 "I grieve for my wife. Things that have happened between my
14 wife and I." And he said, "I didn't kill nobody. I don't
15 know who did. I have got to face the fact I could eat this
16 thing because people are saying stupid things, vindictive
17 things about me that may have been received wrong. Like
18 this guy Keerins," he pointed out. It bothers him that
19 people don't believe him. The fact that he can't make it
20 out there, the fact that people look at him and stereo type
21 him as a psychopath. He was bothered about the news media,
22 in the papers, talking about things like, oh, that he was a
23 chief suspect and we have a chief suspect running around
24 there probably going to kill someone else. He was -- he was
25 bothered about the news media saying things, talking about

1 the many sides of Frank Gable and that sort of thing. He
2 says, "If I were the killer and somebody grabbed on to me,
3 do you think I would have to use a knife or a gun?" Just --
4 he went on to tell me that he was a champion boxer in the
5 Penitentiary for four years. He loved to physically fight.
6 He loved to get into fights. Every time that the guards
7 came and opened his sell, he got them. He says, "check the
8 records. It will tell you." He used to fight the guards
9 every time they came. He is strong. He can throw people
10 around. He says that Keerins says he was -- "he" meaning
11 Frank, he was going to hold me for the police. And he said,
12 "The car thing, it just doesn't fit. I'm two hundred and
13 five pounds, I'm a state A wrestler, it just doesn't fit."
14 Keerins said -- he is claiming that Keerins was telling him
15 the same story, and that he was going to take me to the
16 police, is what Keerins said. I said, "Let's face it, it
17 was a bad time in your life at that time, Frank. You were
18 -- you were out there tweaking." And he kind of laughed.
19 "Tweaking" is a word for methamphetamine users, they use.
20 They call it tweaking. He said, "My mind for instance is
21 totally great. I remember things." I gave him a
22 hypothetical situation talking about myself. I tell him
23 that I'm a champion Navy boxer, I'm a big guy like Francke,
24 somebody is about to get in my car, and the guy like Michael
25 Francke starts roughing you up, especially someone like

1 Michael Francke -- he keeps interrupting me here at this
2 point. He says -- he asked me, "Was he big?" Like he
3 didn't know that he was big. He said, "I thought -- from my
4 attorney, I thought the guy was small. He was like five
5 nine, small build." I say, "You know, anyway, he grabs you,
6 starts roughing you up, says hey, man, what the hell are you
7 doing in my car? You're under arrest. He is not about to
8 let you go. What are you going to do?" He says, "Well, if
9 he is as big as you say he is, I'm just going to stay there.
10 I'm going to let him take me to the police. You know, what
11 is a car theft? I don't do car thefts myself." I said,
12 "What if he is getting real rough with you? He is trying to
13 put you down. Then you're going to hit him with your fist
14 or something, aren't you?" And he says, "Well, if you're a
15 boxer, that's your natural instinct, but I have never been
16 in a fight on the streets with anybody." I say, "If you're
17 confronted on the streets by somebody you have got two
18 choices, you can either fight or run. The fight or flight
19 scenario. Corner him, he is either going to fight or run
20 away." He says, "No, I'm going to stay there. I'm going to
21 go to jail. If the guy is slapping me around, I guess I'll
22 go to jail. At least I am." I tell him that -- we have
23 been talking about five witnesses or he has been telling me
24 that there is five witnesses that will testify. I said,
25 "What if we had a lot of witnesses that are going to testify

1 against you?" He says, "Well, then file charges. I'll
2 fight it in court. I'm confident I'm not a killer. I know
3 that God -- that I believe in Jesus Christ, he knows I'm not
4 a killer. I'm praying every day that God will put the
5 burden on this person's heart so bad that they can't lie. I
6 have got all my friends, people on the streets are praying
7 for me. Praying for the same thing, that this guy will get
8 caught." I said, "Stop and think about this. You have been
9 down there two months, you call us down there because you
10 have information that's going to help us, tell us that you
11 didn't do this." He says, "In fact, I didn't do it. I just
12 didn't do it. I can't give you times, dates, specific
13 things. I would love to, but I can't." He says, "Even if I
14 get the death penalty for this, use hearsay evidence,
15 circumstantial evidence, people saying things, maybe it
16 fits, maybe it doesn't, I'm confident God would let me go
17 there." He is talking about if he goes to jail, fine. If
18 God let's him go there, that's fine. "I know God isn't
19 going to let me go there. Even if I did, I can live with
20 that. God knows I'm not a killer. I got jailers that are
21 Christians. I have got people in the streets that know I'm
22 not a killer." He said, "I couldn't have sat here before
23 and lied before, when I put my daughter's life on the line
24 before God, I couldn't sit here and say God strike my little
25 girl dead. If I did this, take my life now." I said, "Why

1 would you say that?" He said, "Because I believe in my
2 daughter's life, the person that I love more than anything
3 in the world. If I can put her life on the line, that's
4 it." I told him it just amazed me when you said that.
5 "Earlier, I said do you really think I did this?" He is
6 talking about a little bit earlier back at around six
7 o'clock, I had turned off the tape for a minute, got him a
8 cup of coffee, and he said, "Do you remember earlier when I
9 said do you think I did this?" And I said, "Yeah." "And
10 you said yeah." And he said, "I don't really think you
11 know."

12 I reminded Frank Gable about the 15th and 16th when we
13 were down here and we talked for a while and you told me,
14 you swore on a stack of bibles, may God strike your little
15 girl dead if you're lying. And I said that I wrote down
16 everything that you told me. It bothered him when people
17 swore on stacks of bibles and their kids' head, their wife's
18 head. It just tells me that they're using a lot of
19 re-enforcers to convince me that they're telling the truth.
20 He said, "I know that that's the way that you would look at
21 it. You see, otherwise, I wouldn't say that." I sat here
22 and I have thought the whole thing through. I said what do
23 you think I'm trying to do, put words in your mouth? He
24 says, "Uh-huh. I honestly think in my heart that you think
25 I did it. I honestly think in my heart that you think I

1 know who did it or I have information about it." But then
2 he remembers this stuff coming back about Keerins, stuff
3 comes back to him about Shelli and the stuff about that girl
4 being there came back to him. I said I want to tell you
5 something else, I said, "I want to tell you something else,
6 I believe -- I think you did it and I think you want to tell
7 me." He says, "Oh, I probably would if I had did it, but
8 I'm not taking to lying so we can get ourselves an attorney
9 and we can end the conversation."

10 He was hinting here that he may not want to talk to
11 me, so I said, "I want to make it clear that we came down
12 here. We're here to listen. We'll stay here all night if
13 necessary, you know, and I want to talk to you." I wanted
14 him to tell me if he wanted to talk to me. He said, "Well,
15 I'm basically done, but," he says, "I would like to look at
16 some pictures. If you can tell me, you know, about some of
17 these people, what they're saying about me or if I can tell
18 you anything about them, that's" -- he says "I want to help
19 you guys."

20 And that's just a summation of basically what we
21 talked about.

22 Q At that time, Detective Bain comes back in the
23 room?

24 A Yes.

25 Q Okay. Thank you.

1 That's all of the questions I have of Detective Ackom
2 at this time, Your Honor.

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CROSS EXAMINATION

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BY MR. ABEL: At one point in the conversation
or interview, Detective, did Mr. Gable tell you that he was
shocked and then you asked him what are you shocked about,
Frank?

10

A Yes.

11

12

13

14

Q And his response was, "I don't know, it's a
shock and you guys are wasting a lot of time. You have a
serious killer out there running free." Is that what he
told you?

15

A You're on about page 20, aren't you.

16

Q 23.

17

18

19

A 23. Yes. You mean right here where he says,
"Right. He gave me the phone number I went and called it.
I'm shocked --"

20

Q Right.

21

A Yes.

22

23

Q And then following that, the statement I read
you is what he told you?

24

A Yes.

25

Q And just below that you went on to say, "We got

1 Johnny Lee Crouse. That is an independent investigation."

2 Is that right? You said that, made that statement?

3 A Do you want to tell me where you are at,
4 Mr. Abel?

5 Q Oh, that kind of brings to mind my next
6 question. I noticed all along you're reading from this
7 transcript. And, as a matter of fact, if I were -- before
8 you started testifying, if I had picked that transcript up
9 and put it over here and started -- and Mr. Bostwick started
10 asking you questions, it would have been very difficult for
11 you to answer the questions in the manner in which you have,
12 is that true?

13 A Well, yes. I wrote a summation of what -- and
14 took out of here what was, you know, in substance what was
15 in here.

16 Q And you're relying heavily on this transcript
17 that you're looking at right now of the interview?

18 A Yes.

19 Q Okay. Now I have noticed in going through the
20 pages that you have been testifying from that there is a lot
21 of blank spots and things where it says "inaudible" and
22 "conversation I can't understand," that type of stuff, is
23 that right?

24 A Yes. That is correct.

25 Q It would be impossible or virtually impossible

1 for you to fill in the blank spots today in front of this
2 jury, wouldn't it?

3 A I couldn't fill in a lot of the blank spots,
4 things I said or he said.

5 Q That's right.

6 Did Mr. Gable tell you, "it's like you have come
7 around to me fifty times and you're going to keep coming
8 around to the wrong person and I'm going against everything
9 my attorney told me now. Don't talk to them." Did he tell
10 you that?

11 A Yes.

12 Q And then I think you further on down --

13 A But he also told me that, you know, earlier in
14 the transcript in the first few pages that God told him he
15 should talk to us. That he should give us information.
16 Lead us in the right direction. Move us in the right
17 direction.

18 Q I want -- he wanted to help you out, get you off
19 the wrong track, is that right?

20 A Yeah. He wants to help us out. He called us
21 down there to give us information that was going to help us
22 solve this crime.

23 Q And then I think you read -- "I might have made
24 some stupid statement or been involved in some funky
25 statements and that might have been perceived something,

1 wrong or whatever. If we can clarify that, great." I think
2 you read that just a little bit --

3 A Yes.

4 Q Ago. He also stated, "I'm not going to sit here
5 and have you guys start accusing me, again. And I'll just
6 say, well, I terminate this conversation. I would like an
7 attorney because I'm not a killer." He said that, too,
8 didn't he?

9 A He said, "We'll end this conversation." It was
10 like in a third person. He didn't make --

11 Q Well, now let's go to page 25. I think you have
12 got the wrong section. We'll get to that a little later.
13 Page 25. Full, the first full paragraph. Last sentence.
14 Why don't you read it to the jury?

15 A It's right after the -- "I made some stupid
16 statement, funky statements people perceived?"

17 Q The very last sentence there. "I'm not going to
18 sit here and have you guys start accusing me again and I'll
19 just say well" --

20 A "I'll just say, well, I terminate this
21 conversation and I would like an attorney because I'm not a
22 killer."

23 Q He said that, right?

24 A It's like his concern is if we keep accusing him

25 --

1 Q I'm asking you if he said that?

2 A He said that, yes. It's in the transcript.

3 Q Thank you.

4 Consistently through the next few pages that you asked
5 him about what he is doing on the 17th of January, 1989, he
6 can answer that he may have done this, he may have done
7 that, but he cannot tell you what he did on the 17th and
8 18th of January, '89? He can't tell you that for sure, can
9 he?

10 A No. He -- earlier in the transcript he tells us
11 he is positive he is with Kris. He is here, he is there.
12 And then all of a sudden he doesn't know where he is at. I
13 can't tell you where I'm at. He doesn't know. I'm not
14 going to say that. I'm not going to get up on the stand and
15 say that. That's what he is telling us.

16 Q He can't tell you what happened eight, ten
17 months back.

18 The scenarios that you presented to him as to possible
19 ways that this murder happened, these are the kind of things
20 that there have been a lot of gossip about and a lot of
21 speculation in the newspapers, right? And when he answered
22 the scenarios, he was answering you and telling you that
23 some of the things that he read about in the newspaper he
24 thought maybe were a possibility but other things he did not
25 think were a possibility?

1 A Yes.

2 Q And his information, he told you, was based on
3 what he had seen on T.V., listened to on the radio or read
4 in newspapers?

5 A Yes.

6 Q And one of the things he told you is he just
7 didn't see how this scenerio of a jockey box rip off had any
8 bearing whatsoever in this murder. He told you that, didn't
9 he?

10 A He told me that, yes.

11 Q Now you talked quite a little bit about this
12 section where I grieve daily, and this is where you tell us
13 that he -- he started -- that he got upset and so forth.
14 Isn't it a matter of fact that as you have went through this
15 scenario with him, what he was really talking about is his
16 scenario and his regret for the fact that he did assault his
17 wife and, in fact, the evidence in this trial now is he was
18 convicted for that and that's what he was talking about when
19 he got all upset?

20 A No, Mr. Abel. If you -- you can't just take a
21 little section out of this. He talks nonstop. He rambles
22 on and he says -- I said, "Frank, if you did do it, could
23 you tell me you did it?" "Sure, I could. Sure. If I had
24 did that, I would have to. I would have to tell you because
25 I have thought about it. I have laid here and I have

1 thought, you know." And then he says, "I grieve daily about
2 my wife." He is crying at that point, but I just asked him
3 if he did it, could he tell me that he did it. He starts
4 crying.

5 Q And then he says, "It was an accident, man.
6 Man, I didn't mean to cut her." He is not talking about
7 murder, is he?

8 A No. Not there.

9 Q And then right below that he says, "I didn't
10 kill nobody."

11 A Yeah. He also says right below that, "I got to
12 face the facts. I could eat this thing." You know, and he
13 goes on about --

14 Q "Because people are saying stupid stuff or there
15 being vindictive?"

16 A Yes.

17 Q If -- the fact of the matter is that throughout
18 all of these pages of this interview, Frank Gable did the
19 same thing that he did in September, September 15th and 16th
20 of 1989, he vehemently denied any involvement or knowledge
21 in the Michael Francke murder, isn't he?

22 A I wouldn't say he vehemently denied it. Yes, he
23 denied it.

24 Q And he told you he thought maybe Michael Francke
25 was five foot nine and about 160 pounds, right?

1 A He told me that his lawyer told him he was a
2 small man or he understood he was a small man. He also said
3 in the transcript that he knew the Dome Building well and he
4 knew the grounds well, his wife worked over there when he
5 was working around the Dome Building. I thought maybe he
6 knew -- he even knew Michael Francke.

7 Q He told you he didn't know him. He didn't know
8 Mr. Gable -- Mr. Francke, didn't he?

9 A He didn't. That wasn't discussed in this
10 transcript, in this interview.

11 Q And on page 40, maybe 41 in your transcript, we
12 seem to have a little bit different versions here?

13 A Starts on page 40 in mine.

14 Q Is it on 40 in yours? Okay. You asked
15 Mr. Gable, "I think if we could go off somewhere, and you
16 and me were totally alone, and there were no tape recorders,
17 and the room wasn't bugged?"

18 A Wait a minute. Wait a minute. Wait a minute.
19 You forgot something. In mine it says, "Gable laughed
20 loudly."

21 Q We're talking about what you're questioning him
22 about.

23 A Right.

24 Q Not what you perceive.

25 A Well, you're reading a quote from here and I

1 want to --

2 Q That's not a part of the quote. "I think if we
3 could go off somewhere and you and me were totally alone,
4 and there were no tape recorders and the room wasn't
5 bugged," was this room bugged?

6 A No, it wasn't.

7 Q Normally, are such interview rooms bugged?

8 A No.

9 Q Okay. Just threw that in. You just threw that
10 in. And then your last name is you, I think you would tell
11 me. And "Gable" is Frank Gable's response to you. "Even if
12 I hadn't did it?" And your response is, "Huh-uh." Is that
13 what the transcript says?

14 A Yes.

15 Q That is all I have at this time for this
16 witness.

17 Thank you, Your Honor.

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REDIRECT EXAMINATION

BY MR. BOSTWICK: Did you get tired during this interview, Detective Ackom?

A Yes, I did on this one a little.

Q But you kept talking to Mr. Gable, didn't you?

A Yes.

Q Why?

A Because he had called us. He had information. I wanted to get all of the information that he had that -- like -- in this interview, like I did in every other interview, told him we were just as interested in finding out he didn't do it as he did do it, and I wanted to talk to him as long as he wanted to talk to us.

Q And he just kept talking for four and a half hours, didn't he?

A Five and a half hours.

Q Couldn't shut him up, could you?

A No.

Q Thank you, Detective Ackom.

That is all I have.

RECROSS EXAMINATION

1
2
3 BY MR. ABEL: The man such as you whose job it
4 is -- you're a trained, professional investigator, and you
5 got tired, I assume Mr. Gable got awful tired, too, didn't
6 he?

7 A I don't think he did.

8 Q No?

9 A Because after --

10 Q I have nothing further. That's enough
11 questions.
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REDIRECT EXAMINATION

BY MR. BOSTWICK: Go ahead and answer the question.

A After the interview we went into the coffee room, he was in a very good mood. He was joking around. He went around and shook each one of our hands, thanked us for coming, said come back and talk to us. He said I'll wear a wire, go out and work for you. Do anything I can do to help you solve this thing. And I said, "Can I come back another time?" And he said. "Sure. Come on back." He wasn't tired.

Q He wasn't tired and he still wanted to help you out? Get you on the right track, didn't he?

A Yeah. That's right.

Q That is all I have.

Thank you.

MR. ABEL: Nothing further, Your Honor.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you, Judge.

MR. BOSTWICK: At this time. I believe it would be appropriate to take our afternoon recess. It's time for a recess.

THE COURT: All right.

8:55, please, in the morning. See you then.

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(Jury out) 4:30

THE COURT: Tomorrow morning, nine a.m.

MS. MOORE: Thank you, Your Honor.

MR. BOSTWICK: Thank you, Your Honor.

(Proceedings concluded) 4:30

E. R.-349

STATE OF OREGON
MARION COUNTY COURTS

NOV 14 1991

FILED
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

THE STATE OF OREGON,)
)
)
) Plaintiff,)
)
) vs.)
)
)
) FRANK EDWARD GABLE,)
)
)
) Defendant.)
)

Circuit Court Number:

90-C-20442

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that, pursuant to notice duly given to all parties in interest, the above-entitled cause came on regularly for Trial, in the Circuit Court of the State of Oregon for the County of Marion, at Salem, on Friday, May 17, 1991, the Honorable Greg West, presiding.

APPEARANCES

Ms. Sarah Moore, Deputy District Attorney, appeared on behalf of the plaintiff.

Mr. Thomas Bostwick, Deputy District Attorney, appeared on behalf of the plaintiff.

Mr. Robert Abel, Attorney at Law, appeared on behalf of the defendant.

Mr. John Storkel, Attorney at Law, appeared on behalf of the defendant.

BONNIE MALLOW, RPR, CSR (Ore/Cal)
Official Court Reporter
Marion County Courthouse 2m
Salem, Oregon 97301
Phone: 588-5138

1	<u>FRIDAY, MAY 17, 1991</u>	
2	Colloquy	7509
3		
4	<u>TESTIMONY OF PAUL BAIN - RECALLED</u>	
5	Direct Examination	7511
6	Cross Examination	7516
7	ReDirect Examination	7521
8	ReCross Examination	7523
9	ReDirect Examination	7524
10		
11	<u>TESTIMONY OF JOHN P. SALLE</u>	
12	Direct Examination	7525
13	Cross Examination	7540
14	ReDirect Examination	7550
15	Colloquy	7553
16		
17	<u>TESTIMONY OF FREDERICK E. ACKOM</u>	
18	Direct Examination	7555
19	Cross Examination	7580
20	ReDirect Examination	7588
21	ReCross Examination	7589
22	ReDirect Examination	7590
23	ReCross Examination	7591
24	Colloquy	7592
25		

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TESTIMONY OF LOREN T. GLOVER

Direct Examination	7593
Cross Examination	7618
ReDirect Examination	7626

TESTIMONY OF FREDERICK E. ACKOM

Direct Examination	7629
Colloquy	7631

1	<u>STATE'S EXHIBITS</u>			
2		<u>IDENTIFIED</u>	<u>OFFERED</u>	<u>RECEIVED</u>
3				
4	#2 General overview photo	7516		
5	#424 Rights card	7596	7597	7597
6	#474 Salle notes	7550		
7	#475 Photo, Michael Francke	7615	7615	7617
8				
9				
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Friday, May 17 1991

(Whereupon the following proceedings were had,
to-wit:)

THE DEPUTY: All rise.

THE COURT: Be seated, please.

MR. BOSTWICK: Good morning, Your Honor.

THE COURT: Good morning. Good morning. Good
morning. Good morning.

MR. ABEL: Good morning, Judge.

THE COURT: You folks all straight on the
transcript?

MR. BOSTWICK: I believe so, Your Honor.

MR. ABEL: Yes.

THE COURT: Okay. Let's bring the jury in and
call the next witness, please.

You're straight with this gentleman?

THE CLERK: Yes.

MR. BOSTWICK: I believe so.

THE CAMERA MAN: Yes.

THE COURT: Okay. Perfect. What am I doing
here. You people have this all under control.

(Jury in) 9:15

THE COURT: Good morning.

THE JURORS: Good morning.

1 THE COURT: This is the first morning you have
2 had to walk here in the rain, isn't it? What was that loud
3 bang? What made that loud noise? There are no speakers
4 over there. I can't figure out -- it must have come back
5 through there. Sorry about that. We'll do something about
6 that this afternoon.

7 I think we're ready for the next witness.

8 MR. BOSTWICK: State would recall Detective
9 Bain.

10 THE COURT: If you would please resume the
11 witness stand. You're still under oath.

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E. R.-356

Paul Bain - D -

7511

DIRECT EXAMINATION

BY MR. BOSTWICK: Good morning, Detective Bain.

A Good morning.

Q When you were last on the witness stand you were testifying concerning your participation in an interview with Mr. Gable which occurred on the 3rd of November, 1989, and we concluded I believe with your testimony when you had left the room for a period of time. About how long were you out of the room?

A Approximately an hour.

Q Do you recall about what time you re-entered the interview room with Mr. Gable and Detective Ackom?

A Yes. It was approximately 6:56 p.m.

Q At that time did you continue the conversation with Mr. Gable?

A Yes, I did.

Q Okay. Could you relate in substance the nature of that conversation?

A Yes.

Q What questions you asked Mr. Gable and what his responses were?

A Frank and I continued to talk about information that he was receiving from friends of his in the Penitentiary. He spoke again of friends of his coming down

1 telling him to hang in there, they knew that he didn't kill
2 Francke. And that there was a guy in the Penitentiary that
3 knew what really happened, but he was afraid to come forward
4 because he was in fear of his life. Frank told me that at
5 one point he thought he was being railroaded, but then again
6 he felt the case was too big and that they wouldn't try to
7 railroad him on it because of that. And I reminded him that
8 I wasn't interested in railroading him on it, and I told him
9 that from day one. And he said he knew about that. I
10 explained to Frank the problem I was having in the
11 investigation. Basically, that was I had associates of his
12 making statements to the detectives to the effect that he
13 admitted that he killed Michael Francke while on the other
14 hand all I had from Frank was his denial of this. And Frank
15 told me that he didn't believe that we had people making
16 these statements. In fact, he believed that the only person
17 making these statements to police was his wife, Janyne. I
18 tried to assure him that we did have several of his
19 associates making these statements to the police, and Frank
20 told me, fine, go ahead and file charges. That was what he
21 wanted. That the people that were making these statements
22 were -- half of them were speed freaks that didn't know day
23 one from day two let alone telling the police that he was
24 making these types of statements.

25 He told me when he gets up on the stand that a bunch

E. R.-358

Paul Bain - D -

7513

1 of circumstantial evidence wasn't going to amount to squat.
2 And he told me that they were going to dismiss the case and
3 he was going to walk on out of here. He said the shadow of
4 a doubt was all he needed. And I looked at him and I said,
5 "Frank, is that what you're counting on?" And he said,
6 "That's all I need to count on. Even if that is all I'm
7 counting on, I know right here in my heart, they roast me,
8 I'm still going to be Frank Gable doing the best I can."
9 And I said, "Yeah, Frank, but you're still going to have
10 this on your heart and mind." And he said, "No, I'm not."
11 Then he realized what he said. He said, "So what? It's not
12 going to be on my mind. It's not going to be on my mind."
13 I went back to speaking with Frank about this problem
14 I had of his associates making these statements. And Frank
15 told me that he had been informed that I didn't have that.
16 In fact, there was a -- a leak in the State Police
17 headquarters, that he had a State Policeman telling him
18 things about the case. And he wouldn't tell me who this
19 State Policeman was, but he did tell me the reason this
20 policeman was telling him this is because he believed he was
21 innocent. We went back and forth about this issue of
22 whether people were making statements to the police or not.
23 He refused to believe it. So, I told him that an associate
24 of his named Kris Warilla had made the statement to police
25 that Frank had stabbed the guy. Frank told me that he

1 didn't believe Kris had said that, but if Kris did say that,
2 the reason he was saying it was because Kris knew that Frank
3 had worked for the police and Kris probably thought that
4 Frank was responsible for Robert Cornet and Nick DeSantos
5 being arrested.

6 I got back to speaking with Frank about the
7 discrepancy between what he told me on September 15th, that
8 on the night of the murder he had been at home with his wife
9 with twenty to thirty people, and Frank told me that he
10 didn't tell me that on September 15th. He said possibly I
11 may have told you that. I don't know. I said, "Frank, you
12 did tell me that on September 15th you were home alone or
13 with your wife and twenty to thirty people. Now, today,
14 you're telling me you're sure you were with Kris Warilla and
15 you were with him all night on the night of the murder."
16 And Frank told me, "No, I never said I'm sure. I never said
17 I was positive." Frank just began to challenge me and
18 accuse me of coming down to talk to him because I didn't
19 have any evidence, I didn't have anything at all. I tried
20 to remind him that the reason I came down was at his
21 invitation. Frank, just, you know, hold fast. He would not
22 get off the topic of the reason you guys came down here is
23 you don't have squat. After about an hour, hour and fifteen
24 minutes of this, I concluded the interview.

25 Frank had asked me about the third person who had come

1 down with Detective Ackom and myself. I told him it was
2 Sergeant Salle and I introduced Sergeant Salle to Frank and
3 concluded my interview at that time.

4 Q Did you then leave the room, Detective Bain?

5 A Yes. Yes, I did.

6 Q Okay. And Sergeant Salle came in the room and
7 began a conversation with Gable?

8 A Yes, he did.

9 Q Thank you.

10 That is all of the questions I have.

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CROSS EXAMINATION

BY MR. STORTEL: Detective Bain, did Mr. Gable tell you the route that he took when he dropped Janyne Gable off at the Oregon State Hospital?

A Yes, he did.

Q With the courtesy of the judicial assistant, I would approach it. If exhibit two could be put up on the blackboard.

And, Detective Bain, if you wouldn't mind stepping down next to the easel, using a pointer, could you describe the route that Mr. Gable said that he dropped Janyne Gable off at? There is a pointer there.

A Yeah. I see the pointer. I'm looking for the building according to Frank, and I don't know the names of the streets.

Q That's fine. As long as you know the physical location?

A Okay. His wife worked in the area over here and when he dropped her off, he came down this way. I believe he saw a police car and the crime scene tape, proceeded this way, and then back out this route.

Q Okay. You can retake the stand.

Now, when you resumed your questioning, you had been out of the room about an hour, is that correct?

1 A Yes.

2 Q And when you came back into the room, did
3 anybody else leave?

4 A No.

5 Q So approximately how many people were in the
6 room at that time?

7 A Myself and Detective Ackom and Frank Gable.

8 Q Now, at the time that you were interviewing
9 Mr. Gable, you had your notes from the previous interviews,
10 is that correct?

11 A No.

12 Q Before coming down to interview Mr. Gable, had
13 you reviewed your notes?

14 A Yes.

15 Q And you had done that so you could specifically
16 have recollection what had happened earlier, is that
17 correct?

18 A There were notes that I had from my conversation
19 on the 15th of September. There was information that I did
20 not have in note form from meetings at the task force.
21 There were, you know, I didn't have them written down in my
22 possession.

23 Q Okay. And Mr. Gable didn't have a chance to
24 review those notes of earlier conversations, did he?

25 A No.

1 Q So, again, he was talking just off the top of
2 his head, is that correct?

3 A Mr. Gable was?

4 Q Yes?

5 A Yes.

6 Q Now on page 50, you were discussing the fact
7 that Mr. Gable was talking about a case that was against him
8 and you were talking about the fact as to whether or not it
9 was on his mind, is that correct?

10 A Yes.

11 Q And then on page 51, after that discussion, at
12 the top of the page, isn't it true that Frank Gable said --
13 said, "I'll be set free because I know that God will not let
14 me get roasted for something I did not do." Is that
15 correct?

16 A I don't see that on the top of page 51.

17 Q It's four lines down.

18 A I don't see that on page 51, sir.

19 Q Detective Bain, you may have a transcript that
20 the District Attorney's office had, the State Police
21 produced at a different time. It's the same words, but
22 their word processor shifted it down so sometimes when I'm
23 referring to it, it's one page or two off.

24 A I have the transcript with the headers. The 102
25 page --

1 Q Right. The 102 page transcript and, in fact,
2 there is another hundred page transcript which I'm looking
3 at which has the same words but different pages.

4 To orient you, could you look and see where it says,
5 "Well, they will bring something up." Do you see that?

6 A (No response)

7 Q Your Honor, may I approach the witness?

8 THE COURT: Please do.

9 Q Detective Bain, on page 52 of your transcript,
10 does it state, "I'll be set free because I know that God
11 will not let me get roasted for something I did not do?"

12 A Yes.

13 Q Okay. Now, when Mr. Gable is asking you or
14 discussing Kris Warilla with you, isn't it true that he
15 mentions that he told Kris Warilla that he was a snitch
16 working for the police?

17 A It is true that he said that he was working for
18 the police, yes.

19 Q Okay. And isn't it true that Mr. Warilla would
20 be somebody who would be concerned if he thought somebody
21 might inform on him to the police?

22 MR. BOSTWICK: I will object to that as calling
23 for a conclusion by Mr. Bain on what Mr. Warilla might be
24 thinking.

25 THE COURT: Would you state the question, again,

1 if you want to ask it or do you want to withdraw it?

2 MR. STORKE: I'll restate the question, Your
3 Honor.

4 THE COURT: Thank you.

5 MR. STORKE: Isn't it true that in the
6 conversation that Mr. Gable stated that he was working for
7 the police?

8 THE WITNESS: Yes.

9 MR. STORKE: Now moving on again through the
10 transcript, and I'm at page 57 in this particular transcript
11 which is probably about a page different than yours, and
12 I'll ask you this question, which is, when Mr. Gable was
13 discussing whether or not he had been home with Janyne Gable
14 during this interview, isn't it true that he said it is
15 possible I might have been home? That would be page 58 in
16 your transcript?

17 A It says, "I may have said, well, I might have
18 went home."

19 Q Okay. And then also when it was regarding about
20 whether or not he might have been at Shelli Thomas'
21 residence, isn't it true that at the bottom of that page he
22 said I might have been there?

23 A Yes.

24 Q That is all of the questions I have at this
25 point.

REDIRECT EXAMINATION

BY MR. BOSTWICK: Detective Bain, the fact is that you were there at Mr. Gable's request?

A That's a fact, yes.

Q If he had any notes to review, he could have reviewed his notes before he asked you to come down?

A Yes.

Q Okay. Let's talk about the fact that in the December or the 15th interview, September 15th, was he positive where he was on the night of the 17th?

A Yes.

Q He indicated he was at his house with his wife with twenty to thirty people?

A That's what he told me. He said he was sure and he was positive of that.

Q And at the beginning of the interview on the 3rd of November, where was he at?

A Well, he said that he was sure and he was positive he was with Kris and at Kris Warilla's house the night of the murder.

Q And later on in the interview he is not so positive?

A He said he never said that later on in the interview.

E. R.-367

Paul Bain - ReD -

7522

1 Q Did he say he was at Shelli Thomas' house?

2 A Yes.

3 Q Did he say he was at Kris Warilla's house?

4 A Yes.

5 Q Did he say he was at his house?

6 A Yes.

7 Q Okay. Did he ever say he was anywhere else?

8 A Yeah. He told me he could have been on a
9 rocketship ride to the moon and back, too.

10 Q Thank you.

11 That is all of the questions I have.

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RECROSS EXAMINATION

BY MR. STORKEL: Isn't it true, Detective Bain, when he was telling you where he was during this specific part of the interview he was saying he might have been here and might have been there?

A Yes.

Q He might have been there and he might have been there.

A Yes.

Q Was Mr. Gable ever provided with any opportunity to review the notes from September 15th during this interview?

A No.

Q No further questions.

THE COURT: Anything else, Mr. Bostwick?

REDIRECT EXAMINATION

BY MR. BOSTWICK: Did he ever tell you where he wasn't that particular night?

A Yes.

Q Where was he positive he wasn't?

A He told me he was positive he was not on the hospital grounds on the night of the murder and that he did not kill Michael Francke. That he did not know who did. He was positive of that.

Q That's the only thing he is positive about?

A That is correct.

Q Thank you.

MR. STORKEL: No questions.

MR. BOSTWICK: Did he need any notes?

THE WITNESS: No. He didn't need any notes to tell me that.

MR. BOSTWICK: He remembered where he wasn't?

THE WITNESS: Correct.

MR. BOSTWICK: Thank you, Detective Bain.

MR. STORKEL: No further questions.

THE COURT: You may step down. Thank you.

MR. BOSTWICK: Sergeant Salle.

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JOHN P. SALLE

called as a witness on behalf of the plaintiff, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please, sir.

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: John P. Salle, S-A-L-L-E.

1 during the interview Detective Bain came out, explained to
2 me that Frank had said that he had seen me arrive at the
3 jail and that he was curious about who I was, and so I came
4 in to the interview.

5 Q Okay. What time did you join the interview?

6 A At about 8:20 p.m.

7 Q And was anyone else in the room besides yourself
8 and Mr. Gable?

9 A Yes. Detectives Ackom and Bain.

10 Q So all four of you were in the room at one time?

11 A Yes, sir.

12 Q Did you have a conversation with Mr. Gable at
13 that time?

14 A Yes.

15 Q Could you relate the substance? What questions
16 you asked?

17 A I asked Frank if he remembered me, and he
18 indicated that he did. We had met in passing in September.
19 I asked him how he was doing. He told me he was doing
20 better. I asked him or I told him that I understand you
21 wanted to meet me, and he told me not really, but we
22 continued to converse. Frank told me that he had never told
23 anyone that he had killed Michael Francke. I asked Frank
24 why people then were telling us that he had made statements
25 to them to that effect, and we got in a discussion about

1 Michael Keerins and Frank's suspicions of Michael Keerins as
2 possibly being involved in the homicide. Frank told me that
3 he thought that Michael Keerins was a smart guy and that he
4 came forward to the police and made statements about Frank
5 prior to Frank coming to the police and making statements
6 about his suspicions of Mike. He told me that he had never
7 seen Michael Keerins on the street and that he had never
8 been to his house.

9 Q Do you know Michael Keerins?

10 A Pardon me?

11 Q Do you know Michael Keerins?

12 A Yes, sir. I do.

13 Q Can you describe Michael Keerins?

14 A Oh, Mike's probably five ten or eleven, one
15 hundred and eighty pounds. He has got long hair, at least
16 to his shoulders. Long, very straight hair and he has --
17 his hair is blonde.

18 Q Thank you.

19 A We continued talking. Frank discussed Mike
20 Keerins story as related in the press about statements made
21 to Keerins by Frank, and he told me that that account of
22 what occurred doesn't fit. He told me that he had seen an
23 aerial photograph of the area and that the car which he
24 described as a state vehicle was unlocked and that the car
25 was a short distance from the Dome Building and he told me

1 that he worked at the Dome Building before so he was
2 familiar with the area and he told me that it wouldn't take
3 any time at all for somebody to approach the car, get into
4 the car, since it was unlocked, take the property and leave.

5 I asked Frank where he might have been on the evening
6 of the 17th, the night of the murder, and he told me he
7 thought he might have been with Kris Warilla, but that he
8 wasn't sure. He told me he might have been with Shelli
9 Thomas. He told me if he had been with Kris that they may
10 have been out Dempsey Dumpstering. And I asked Frank what
11 Dempsey dumpstering was and he told me that was going out to
12 the Salvation Army type bins and looking for things to take.
13 He told me that Kris Warilla collected old bottles and
14 sometimes they found old bottles. I asked him then you're
15 pretty sure that you were at Kris' house that night, with
16 Kris that night? And he told me he was not. He could have
17 been with Kris, may have been at home or may have been up in
18 Portland.

19 I asked him about the next morning, the 18th, the
20 morning after the homicide where he might have been. He
21 told me that he could have been home or could have been at
22 Shelli's and he asked me about when Kris Keerins had been
23 arrested after the homicide occurred, if it was pretty much
24 the same day or shortly thereafter, and I told him it was
25 within a few days. He told me that the day that he visited

1 Shelli that he was thinking of -- that Kris Keerins'
2 girlfriend was there and had made statements about her
3 boyfriend getting arrested. So, we were able to adduce that
4 that probably wasn't the morning that he was thinking of.

5 I asked Frank if he could tell me five people that
6 might tell us that he had told them that he killed Michael
7 Francke, and why those people might say such a thing. He
8 told me that Randy Studer may say that he told me that.
9 Randy had invested money with Frank to buy some narcotics or
10 buy some drugs and that he had paid him back, paid Randy
11 back. In fact, paid him back double, but that they had got
12 in an argument and that Frank had beaten Randy up and for
13 that reason Randy didn't like him and for that reason he may
14 say that Frank made the statement.

15 The next person he mentioned was Doug Scritchfield or
16 Munchy Scritchfield, excuse me. He told me that Munchy had
17 ratted on him on one occasion. He told me that he had
18 spread the word that Munchy was a rat. He told me on one
19 occasion that Munchy fired shots at him, and he told me that
20 he knew a lot about criminal activity that Munchy had been
21 involved in. And I asked him, well, if Munchy knows that
22 you know all of this criminal information about him, you
23 know, why would he come to the police? You know, thinking
24 that you, Frank, would come to the police and tell us about
25 crimes that Munchy committed? And he told me that that

1 wouldn't make any difference because if someone would come
2 forward and provide information to solve the homicide, that
3 the state would give that person two or three free felonies
4 and two or three additional free felonies in the future for
5 future crimes.

6 The next person we mentioned or that Frank mentioned
7 was Kris Warilla. He told me that Paul Bain had told him
8 earlier that Kris had made statements to that effect. Frank
9 told me that he didn't necessarily believe that, but if
10 Kris, in fact, had done that, his reason would be that he
11 thought that Frank had snitched on Robert Cornet and Nick
12 DeSantos. In talking about Warilla, Frank told me that --
13 he told me that he didn't think that Warilla knew because he
14 didn't think he made that statement to Warilla, but then he
15 told me that he didn't make that statement to anybody. And
16 he asked me who could be spreading this information.

17 The next person he mentioned was Jerry Paul Baker.
18 And for a reason for Jerry Paul, he told me that Jerry Paul
19 thought that Frank had tapped his old lady or had sex with
20 his wife.

21 He mentioned in passing Dennis Gause. Dennis would
22 have the reason, the fact that Frank was spending sometime
23 with Dennis' girlfriend, Shelli Thomas.

24 He mentioned Mickey Goss, again, in passing stating
25 that he spent a lot of time with him during that time

1 period. I asked him again then what he might recall about
2 the evening of the 17th, and he told me that he may have
3 been over at Warilla's and that if so, Gayla Freeman, Patty,
4 a girl from Portland would have been there as well, but he
5 wasn't sure that that was the day. I told Frank that five
6 people really had told us about him making statements to
7 them in reference to killing Michael Francke, and I told him
8 that our discussion that we had had regarding that really
9 doesn't explain away those statements. Frank told me that
10 he didn't kill Michael Francke. And he told me that he had
11 heard some information about some kids that had stayed at
12 Buster Burgess' house during that time frame that had to run
13 away from a car burglary. We discussed that further, the
14 statements that these people were telling us, and Detective
15 Ackom became involved in the conversation. And Frank told
16 us that these people that are telling this information to us
17 must have misinterpreted a statement that he had made to
18 them. He had made the statement to them that he was being
19 investigated for the Michael Francke killing, and that they
20 must have interpreted that to be some sort of confession.

21 Frank told us he wasn't that stupid. That he is too
22 intelligent to go around confessing to a murder, that his
23 record shows that.

24 He mentioned the hair and blood that was taken from
25 him and that nothing came of that. That all we had was

1 hearsay information and five bona fide liars, and that we
2 should go to trial.

3 Frank mentioned a leak that we have in the -- had at
4 that time in the investigation. He told me that a State
5 Policeman was providing him with information about our
6 investigation through a third party.

7 I asked Frank who his best friend was in that time
8 period and he told me that that would have been God. And I
9 told him I was interested in a living person. And he told
10 me that -- that he really didn't have any good friends, and
11 we discussed it a little further and he told me that Shelli
12 Thomas would have been a good friend. And I asked him for a
13 male friend. He told me that Mark Gesner would have been a
14 good friend during that time period. And we had a
15 conversation about whether or not he could confide in Mark.
16 He told us that he doesn't confide in anybody. And he told
17 me that -- that he doesn't talk. He doesn't see a thing
18 when it happens. That he is blind, and that he learned
19 these traits basically as a result basically of his ten
20 years in the Penitentiary. He told me the only time he ever
21 ratted on anybody was for the Keizer Police Department and
22 that he did that for his wife.

23 Getting back to Gesner, we asked him if he would, for
24 example, go Dempsey dumpstering with Mark Gesner and he told
25 us that Gesner doesn't go Dempsey dumpstering. We asked him

1 about doing drugs with Gesner, and he told us that during
2 that time period Gesner was his main connection for wire,
3 and that he was getting several ounces a week and that
4 through him his friends were getting several pounds of wire.

5 Q What is wire?

6 A (No response)

7 Q What is wire?

8 A Wire is a street term for methamphetamine.

9 Q Okay.

10 A We asked him if -- if Gesner had essential
11 information on him that could hurt him, would he give him
12 up? And he told us that -- that he would roll him in a
13 minute. So we continued along the lines of who Frank could
14 really trust, and he pointed out that Kenny Farrel is a
15 pretty stand up guy and he thought he could trust Kenny.

16 He mentioned briefly Joel Bechtal and cited him as a
17 person that he couldn't trust. And, again, Frank told us
18 that he really didn't have a best friend. In fact, that he
19 didn't trust his wife. He told me that he had written a
20 poem about keeping your mouth shut, basically, within the
21 last few weeks. He told me that he committed books and
22 books and books of crimes and that the thing is that he just
23 wouldn't tell anybody about this activity. He told me when
24 he got out of the Penitentiary that he was -- it was his
25 intent to not commit any further crimes, and that since he

1 had been out he had gone up to Portland and gotten into some
2 basements and some storage lockers, but he hadn't committed
3 any real crimes.

4 He mentioned Earle Childers. Mentioned the night when
5 Earle picked him up or he was in a car with Earle and Earle
6 explained to him that the car was stolen. He thought that
7 Earle was a pretty good guy and that Earle wouldn't talk to
8 the police if he knew some information about Frank.

9 Frank told me that if he did the killing he wouldn't
10 go around talking about it to anybody. He told me that he
11 would be the God dangdest fool that he ever met if he went
12 around confessing to a capitol killing. I asked Frank what
13 a capitol killing was, and he said to me that was the murder
14 of a police officer or any corrections official.

15 May I get a glass of water?

16 THE COURT: Sure.

17 THE WITNESS: In speaking about -- a little bit
18 about corrections, Frank mentioned that he had heard about a
19 possible conspiracy wherein Michael Francke was about to
20 uncover a drug conspiracy in Corrections and he told me that
21 would be a very good way to do this murder. That
22 Corrections could take an inmate out of the population at
23 the Penitentiary, have him go out -- have him go out and do
24 the murder, bring him back, put him inside, and when he was
25 paroled give him his money and tell him good job.

1 I then asked Frank again probably or maybe or if
2 probably or maybe he was at Kris Warilla's on the night of
3 the 17th, and he told me that Kris may have been at his
4 house that night.

5 I asked Frank what clothes he would have been wearing,
6 perhaps, on the evening of the 17th. And he told me he had
7 -- he would have been wearing his acid wash pants or his
8 blue pants. That those were the only two pants that he had
9 during that time period.

10 He told me he would have been wearing his brown top
11 boots or his Spaulding tennis shoes. He told me that he
12 would have been wearing probably a tank top.

13 I asked him about a trench coat and he told me that
14 Kenny Farrel had a black trench coat. He told me that he,
15 in fact, Frank, had had a trench coat and that it was a tan
16 trench coat. And I asked him about it. He told me that he
17 and Kris were out Dempsey dumpstering one night and that he
18 had found the coat and that it had no belt or belt loops but
19 it had the shoulder epaulettes, and he told me that if
20 someone mentioned Gable in a trench coat that that's the
21 coat they would have been talking about because he wore it
22 all around.

23 This brings us to about 8:57 p.m. at which time
24 Detective Ackom changed the tape. And then about a minute
25 later Detective Ackom left the room, leaving Frank and I by

1 himself or by ourselves. And Frank asked me who I thought
2 did this murder, and I told him that I thought that he did.
3 He told me that he was under the impression that Michael
4 Francke was about five eight or five ten, weighing one
5 hundred and sixty pounds and that he wouldn't have any
6 problem putting a guy that size down with just his hands. I
7 told him that Michael Francke was about six four. Frank
8 told me that he didn't do the murder. That he doesn't know
9 who did the murder. That all we have is a bunch of
10 circumstantial evidence and that we should take him to
11 Court.

12 We talked again about people misinterpreting his
13 statement that he was being investigated for the Michael
14 Francke killing and he told me that each person he told that
15 to he was sure to point out, now, I did not kill this guy.
16 I asked him how many people he told that to, and he told me
17 hundreds. And I asked him the time frame, and he said from
18 June until then, in November. And I asked him to tell me
19 some of the names of some of those people, and he told me he
20 wasn't going to play name games with me. We discussed it a
21 little further, and Frank told me that he didn't do the
22 murder and that he loves his daughter, that he is a
23 Christian and that if he did this murder may God strike his
24 daughter dead. He agreed to tell me some of the people he
25 told this to. I'm going to read, if I may, from the

E. R.-382

John P. Salle - D

7538

1 transcript. "Every jailer in this jail. Every inmate that
2 I come in contact with. Basically every person on the
3 outside. I have told it to Jerry Paul. I have told it to
4 Debbie. I have told it to Kris. I have told it to Shelli.
5 I have told it to Dennis. Everyone that, you know, that I
6 have contacted. Jean Hathaway. She knows. Everybody that
7 knows that name, I have told."

8 We discussed it further, the fact that we needed to --
9 if, in fact, Frank was not putting this information out, who
10 was? I asked Frank for some direction. And we discussed or
11 he brought up, again, the Keerins'. Michael Keerins and
12 Kris Keerins. The Keerins' brothers as possibly being
13 involved in this.

14 We discussed -- continued to discuss who might be
15 responsible for this homicide, and he told me, again, cited
16 the Burgess kids that had had to run away from the jockey
17 boxing. He told me it could have been anybody with knives.
18 It could have been anyone in the area that night that was
19 just too tweaked out. He told me he thought about Mickey
20 Goss, that he was doing a lot of drugs in that time period.
21 He told me that we should take a look at a guy named Moe who
22 was living in the area who cut some people's heads off in
23 Klamath Falls. And we talked a little bit about knives.
24 Frank told me that he had had some nice cooking knives that
25 he had given to partners. He told me that he had nice

1 switch blades, and he told me that he had a Rambo type knife
2 that he had broken the handle off of while splitting some
3 wood.

4 At about that time, Detective Ackom came back in the
5 room and we got into a conversation about quitting smoking,
6 and within a few minutes I left the room leaving Detective
7 Ackom and Frank in the room.

8 Q Thank you, Sergeant Salle.

9 That is all I have.

10 MR. ABEL: Are you through?

11 MR. BOSTWICK: I have nothing further.

12 MR. ABEL: Oh, okay.

13 A JUROR: Excuse me.

14 (One of the alternate jurors
15 signaled to the bailiff and was taken out and into the jury
16 room for a moment. She came back in now)

17 THE COURT: Okay?

18 A JUROR: Yes.

19 THE COURT: Okay.

20 MR. ABEL: Thank you, Your Honor.

21

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25

CROSS EXAMINATION

1
2
3 BY MR. ABEL: Good morning, Sergeant. You're
4 not aware of this because you weren't in the room, but we
5 have had a little bit of a problem coordinating our
6 transcripts that we received through discovery and what
7 you're going to be reading from, so I thought maybe we could
8 avoid this.

9 Through the courtesy of the judicial assistant, I was
10 allowed to look at your transcript before I started
11 questioning. Do we have one?

12 THE WITNESS: Am I going --

13 MR. BOSTWICK: Why don't you get something from
14 the witness. He is asking?

15 THE WITNESS: Am I going to need something to
16 refer to?

17 MR. ABEL: Could we remove that exhibit?

18 MR. BOSTWICK: Oh, I'll get that.

19 THE WITNESS: Do I need --

20 THE COURT: Are you reading from a transcript?

21 THE WITNESS: Yes, sir.

22 THE COURT: He is just making sure.

23 THE CLERK: Do you want it?

24 MR. ABEL: I just want to look at it and then I
25 will give it back to him.

1 MR. BOSTWICK: He has the same kind you have,
2 Bob.

3 Your Honor, I think he can tell whether it's a
4 headered one or not fairly soon.

5 MR. ABEL: I just wanted to see what he had.

6 MR. BOSTWICK: I could tell that.

7 MR. ABEL: Sergeant, I believe you mentioned
8 that Detective Ackom or Detective Bain, one or the other,
9 was your supervisor?

10 THE WITNESS: Was my supervisor?

11 MR. ABEL: Yeah?

12 A No, sir. I was the supervisor.

13 Q Oh, you were the supervisor?

14 A Yes, sir.

15 Q Okay. And was there a particular reason that on
16 November 3rd, '91, (sic '89) you went -- you traveled with
17 the two detectives to Coos Bay?

18 A To -- yes. To essentially provide them with
19 what they needed for this interview as far as logistics to
20 communicate with the task force here in Salem.

21 Q Now, it is correct, is it not, that you did not
22 go into the interview room for quite a long period of time?

23 A Yes, sir.

24 Q And was there a reason for that?

25 A Yes. Frank had asked specifically to speak with

1 Detective Bain and anyone that he might care to bring along.

2 Q I meant -- I meant on the day in question. Why
3 did you not go into the room or is that your answer, that
4 you didn't think Mr. Gable wanted to talk to you?

5 A I felt both detectives were quite familiar with
6 the case and didn't need my presence.

7 Q I think you testified that you asked Mr. Gable
8 if he knew you, and he indicated that he did. And I was
9 looking at the transcript here, and the first time I see
10 your name mentioned in the entire transcript is on page 62
11 and you said, "You remember me, right, Frank." And Gable --
12 Mr. Gable's respond was, "I don't think so."

13 A That is correct.

14 Q So he didn't know you?

15 A No. That's not correct. I explained to him I
16 met you in September. I was with Fred, and he acknowledged
17 recognizing me.

18 Q Okay. When -- do you recall when Detectives
19 Ackom and Bain first started interviewing Mr. Gable?

20 A Excuse me, at 4:45 I believe. Let me check my
21 notebooks here. Yes. I have in my notebook at 4:45 p.m.
22 the interview began.

23 Q And that notebook, what did you write? Did you
24 write things about this particular day in that notebook?

25 A Yes.

1 Q Through the courtesy of the judicial assistant,
2 I would like to look at that, also.

3 A I believe you have a full copy of that notebook
4 already.

5 Q Sergeant, I know that I have copies. Very poor
6 copies. They're almost impossible to read.

7 It appears that prior to traveling to Coos Bay you
8 went to the Marion County jail to talk to Michael Keerins,
9 is that right?

10 A Yes.

11 Q Is that the first time you had ever met Michael
12 Keerins?

13 A I don't know. I don't recall if that would have
14 been the first meeting or not.

15 Q Did you ever arrest Michael Keerins?

16 A No, sir.

17 Q When you prepared your -- maybe I'm jumping the
18 gun a little bit. I'm through with this. Thank you.

19 When you prepared your portion of this transcript that
20 I just looked at you have in front of you now, did you
21 prepare your portion of the transcript from your little
22 brown book or --

23 A No. I prepared this from the tape.

24 Q And I think that Detective -- both Detectives
25 Bain and Ackom have previously told us the three of you sat

1 down together and listened to the tape trying -- trying to
2 prepare this transcript, and you had some difficulty doing
3 that, is that right? Because of the quality of the tape?

4 A Yeah. We had difficulty until we got the
5 correct equipment to facilitate it.

6 Q Would you agree with me, Sergeant, that the
7 three of you did the very best you could to get a good
8 quality transcript that really reflected what went on that
9 day?

10 A Yes, sir.

11 Q I did kind of an interesting thing as I was
12 going through this because I noticed all of these things --
13 if you look here and compare your transcript, whenever you
14 have got a green and a yellow it says "inaudible," "could
15 not understand" and as you go through this, if you want to
16 go through it page after page after page after page --

17 MR. BOSTWICK: Your Honor, I think I'm going to
18 object here. I don't know if he is cross examining the
19 Detective on how the transcript was prepared or he certainly
20 is not cross examining him about what he testified to and if
21 Mr. Gable wants to testify, he can have the opportunity at a
22 later date or argue his case to the jury at the appropriate
23 time.

24 MR. ABEL: Your Honor, he just told us that he
25 prepared this transcript himself and he did the best job he

1 could and I'm asking him now to go through it and I'm asking
2 him if he agrees with me that there is a whole bunch of
3 stuff that they could not make out off of that long
4 conversation with Mr. Gable, tape recorded conversation.

5 THE COURT: I would allow you to ask that
6 question.

7 MR. ABEL: So would you agree with me, Sergeant,
8 that there is a lot of stuff that went on during the
9 conversation with Mr. Gable that is not in this transcript?

10 THE WITNESS: I think that's a pretty general
11 statement, sir. There is a lot of inaudibles.

12 MR. ABEL: On every single page there is stuff
13 that you couldn't hear on that tape, isn't that true?

14 A I haven't looked at every single page, but,
15 again, there are a lot of inaudibles.

16 Q Would you like to see my transcript where I have
17 lined it out? And if I show you, maybe we could count every
18 one of them?

19 A Would you like me to go through this page by
20 page, sir?

21 Q If you would agree with me that there is a whole
22 bunch of material, a lot of words were spoken during that
23 long, long interview in Coos Bay that are not in this
24 transcript, we don't have to go through that?

25 A I will agree with that.

1 Q Thank you.

2 Now, I believe you also -- when you started
3 approaching -- let's back up a little bit, again.

4 What was the reason that after you had sat outside or
5 done whatever in Coos Bay and then you went in -- and I
6 understand that you went in because Mr. Gable inquired about
7 you, but when you went in and started talking to Frank, was
8 there any particular reason that you took over the
9 questioning at that time?

10 A Not in particular. I just started talking to
11 Frank and this is where it led.

12 Q This wasn't a prearranged agreement between you
13 and Detectives Ackom and Bain?

14 A No. I had not planned on participating at all
15 in the interview.

16 Q I have heard of situations where there are
17 prolonged examinations of suspects and it's kind of a
18 systematic operation where one officer talks for a while and
19 then another Officer comes in and talks for a while and one
20 officer gets a little gruff and mean and another officer
21 comes in and is very polite. Isn't that common practice in
22 investigative work?

23 A Yeah. The term for that is good guy/bad guy.

24 Q Yeah. And when did you actually come into the
25 interview room the first time?

1 A At about 8:20 p.m.

2 Q And how long were you in the room?

3 A For -- for about an hour.

4 Q And you were well aware that Mr. Gable had been

5 talking since 4:45?

6 A Yes, sir.

7 Q Okay. Mr. Gable seem tired to you?

8 A No.

9 Q Very alert?

10 A Yes.

11 Q Detective Ackom seem a little tired?

12 A Not really, no.

13 Q How about Detective Bain?

14 A No.

15 Q Everyone was fresh and alert after this long

16 interview --

17 A Yeah.

18 Q Is what you're telling us?

19 A Yeah.

20 Q Okay. Is it correct, Sergeant, that from 4:45

21 until termination somewhere late in the evening, despite the

22 fact that Mr. Gable was asked over and over and over again

23 about his involvement in the murder of Michael Francke, that

24 no matter who approached him, who talked to him, he

25 consistently told each of you he had nothing to do with the

1 Michael Francke murder?

2 A Yes, sir. That is true.

3 Q Now you talked about five people, and could you
4 -- could you -- let's zero in on those for a while, these
5 folks that are telling stories about Mr. Gable. Would you
6 give us their names?

7 A Excuse me?

8 Q The names of the five people you were talking
9 about?

10 A That I brought up or that I mentioned or that
11 Frank brought up?

12 Q I believe that you brought up. That you have
13 five people that say that -- that he told them something?

14 A It would be Kris Warilla, Gayla Freeman, Mark
15 Gesner, Kris Keerins, Jodie Swearingen.

16 Q Do you know all of these folks?

17 A No.

18 Q Do you know any of them?

19 A I have seen a few of them. A couple of them --
20 I have never spoken with any of those persons except Mike
21 Keerins.

22 Q Would it be safe to say then, with the exception
23 of Mike Keerins, that if you have never talked to them, you
24 have never, yourself, completed a report involving these
25 five people?

1 A Not that I recall.

2 Q Okay. So when you were chatting with Mr. Gable
3 about all of these folks, you were talking about secondhand
4 information as far as you're concerned?

5 A I'm talking about information told to me by
6 other members of the task force. Yes, sir.

7 Q Thank you.

8 How long was Detective Ackom out of the interview room
9 while you were talking to Mr. Gable?

10 A About ten minutes.

11 Q Was there any particular reason that you
12 discussed the fact as to why Detective Ackom took back --
13 took over again in the questioning process?

14 A No. It was not planned.

15 Q You asked Mr. Gable whether he knew John Crouse,
16 is that right?

17 A Yes.

18 Q I think you talked a little bit about a guy
19 named Buck Burgess, too, didn't you?

20 A Yes.

21 Q That is all I have. Thank you.

22 Thank you, Sergeant.

23

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REDIRECT EXAMINATION

BY MR. BOSTWICK: May I have this marked as an exhibit, 474?

THE CLERK: 474.

MR. BOSTWICK: Can you identify that, sir?

THE WITNESS: This is a xerox copy of my notebook for November 3rd, 1989.

MR. BOSTWICK: Provided in discovery?

A Yes.

Q Okay. Can you read that?

A Easily, clearly.

Q Mr. Abel ever contact you at any time during this investigation and tell you he couldn't read your notes?

A No, sir.

Q Okay. If he would have, would he have been provided better notes?

A Yes, sir.

Q Than what he, apparently, had?

A Yes, sir.

Q Let's talk about who was tired in the interview. The interview started at what time?

A 4:45.

Q That's because you were contacted earlier in the day and asked to come down and meet Mr. Gable?

1 A That is correct.

2 Q At his request?

3 A That is correct.

4 Q Did you see Mr. Gable at the beginning of the
5 interview? See him go into the room?

6 A I don't believe that I did, sir.

7 Q During the period of time, how long of a period
8 of time were you with Mr. Gable?

9 A For about an hour.

10 Q Okay. During that period of time, did Mr. Gable
11 appear to be suffering from any mental or physical
12 disability?

13 A No, sir.

14 Q Did he appear to be under the influence of any
15 alcohol or any drugs?

16 A No.

17 Q Did you threaten him in any way, Sergeant Salle?

18 A No.

19 Q Did you promise him anything?

20 A No, sir.

21 Q Did you offer him any inducements of any kind?

22 A No.

23 Q Did he appear to be tired, sleepy, upset?

24 A He was talkative, alert, aggressive.

25 Q He was there because he wanted to be there?

1 A Yes.

2 Q Why were you there?

3 A Because Frank wanted to talk to us.

4 Q And why did you go into the interview room?

5 A Because he asked -- because he asked about me.

6 Q Did you have a conversation with Mr. Gable after
7 the taped portion of the interview?

8 A Yeah -- yes.

9 Q How long a conversation did you have with him?

10 A Just a few minutes in the coffee room there at
11 the jail.

12 Q What was Mr. Gable's attitude at that particular
13 time?

14 A Talkative, friendly, alert.

15 Q What did he say to you?

16 A He told us essentially to come back and see him
17 again when we wanted to. That he would be more than happy
18 to wear a wire, and go in -- get outside and see if he could
19 help us figure out who really committed this homicide.

20 Q He is there to help you out?

21 A Yes.

22 Q Thank you, Sergeant Salle.

23 That is all I have at this time.

24 MR. ABEL: No further questions.

25 THE COURT: You may step down.

1 Thank you, Sergeant.

2 MR. BOSTWICK: Your Honor, it might be
3 appropriate to take our recess at this time.

4 THE COURT: We'll do it.

5 (Jury out) 10:20

6 THE COURT: Everyone else has left.

7 (Recess) 10:20 - 10:55
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1 THE DEPUTY: All rise.

2 THE COURT: Be seated, please.

3 Okay. Let's bring the jury in.

4 (Jury in) 10:55

5 THE COURT: Okay.

6 MR. BOSTWICK: Thank you, Your Honor.

7 State would recall Detective Ackom.

8 THE COURT: If you would please resume the
9 witness stand. You're still under oath.

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DIRECT EXAMINATION

BY MR. BOSTWICK: Good morning, Detective Ackom.

A Good morning.

Q I believe the last time you were on the witness stand you were relating a portion of the interview of November 3rd, 1989, with the defendant, Mr. Gable?

A Yes.

Q And I believe during late -- the latter stages of that interview you left the room and Mr. Gable was talking to Sergeant Salle for a period of time and then you re-entered the room?

A Yes.

Q And I believe Sergeant Salle left at that time?

A Yes, he did. About nine p.m.

Q Okay. And you talked to Mr. Gable for a period of thirty minutes or so at the end of that interview is, that correct?

A Yes, I did.

Q Okay. Could you relate the substance of the conversation that you had with the defendant at that time, sir?

A I started the conversation talking to him about Jodie. I asked him if Jodie could have seen him on the 17th. He said that he hadn't met Jodie until July. That

1 Jodie was a bag bitch. He associated Jodie with Munchy.
2 That she was a bag bitch. She would get laid right now for
3 dope. I asked him if -- if she could have seen him on the
4 17th. He first said, well -- then he changed it to June and
5 then he says, well, no, it was in July. The first time I
6 ever met her was back in July. I asked him if Munchy was
7 her main man, and he said no. She came out to the house,
8 though, once in Keizer -- where he lived in Keizer for a
9 couple of hours. She spent most of the time, that time, in
10 the bedroom. He didn't really know her. He didn't meet her
11 until July. I said, you know, I asked him -- I was trying
12 to establish if he had seen her on the 17th of January. He
13 said, well, she probably could have, but I don't know where
14 I was. I was either at Kris' and he gave me some new places
15 that he had possibly been that night, the Jackpot Market,
16 Jerry Paul's, Rickls, Randy's, Shelli's. Maybe I was over
17 at the halfway house at 25th and State Street. He,
18 apparently, didn't know where he was.

19 Q Detective Ackom?

20 A Yes.

21 Q You made a comment about Ms. Swearingen,
22 Mr. Gable said that she was a bag bitch?

23 A Yes.

24 Q I guess to educate the jury, could you tell us
25 what that is, if you know?

1 A Well, I understand it to be a girl that has sex
2 with someone. That's how she gets her dope, that she has
3 sex with them. It's whoever she is with at the time.

4 Q Okay. Thank you.
5 You can continue?

6 A I asked him if he -- if she, Jodie, could have
7 seen him anywhere on the State Hospital grounds. He very
8 emphatically told me that, no, she could not have seen me on
9 the State Hospital grounds. Nowhere near the State Hospital
10 grounds. I distinctly remember that I was not there. And I
11 asked him why he thought Keerins had done this or why, you
12 know, he thought Keerins had done the crime. He said, I
13 didn't say I thought he did it, I said he might have did it
14 or he might know who did it. He went into some things that
15 he had talked about earlier in the transcript, that -- that
16 shadow of a doubt, Keerins, he figured had a chance of
17 getting his brother off of it because he thought his brother
18 was involved, hinted around he knew something, he was
19 afraid, he figured Keerins was afraid. He would roll on
20 him. So, he, Keerins, rolled on him first type of thing. I
21 said, well, we can't put Keerins there. And he said, you
22 can't put me there either. He said, I figure if you had
23 anything you would have -- this case would have been gone or
24 done a long time ago. He studied law for ten years. He
25 knows about circumstantial evidence. Due process. He knows

1 what it takes to get a case going. He said he would love
2 the case to go to Grand Jury. He says all we have is a
3 bunch of circumstantial evidence, people saying that he,
4 Gable, did it. That type of thing. He is telling me that
5 we have a leak in our investigation. He says it's a person
6 right inside your building, and he said it even could be
7 you. Referring to me. He says, I think you guys are just
8 putting me on the move. It's like you know I didn't do it.
9 I told you what I know, what my suspicions are about
10 Keerins. He doesn't understand why Keerins would be saying
11 something like that unless Keerins was after the reward or
12 he is just a publicity seeker, a chronic liar. He has five
13 or six witnesses that will testify in court against any
14 witnesses that we have. All of our witnesses have records.
15 They're from the Penitentiary. If it goes to trial, he
16 knows he is going to win. He is hoping it will go to trial.
17 Jesus Christ is in his life. He prays every day. He has
18 got a spiritual change in his life. I gave you guys what I
19 could. Seems like you keep going around the bushes. What
20 good is it doing. He said, you have a killer running out --
21 around out there, Fred, and it's not me. I don't know who
22 did it.

23 We had some discussion about -- he said that a couple
24 months prior when we were down, there was a Detective with
25 us, a guy by the name of Dennis. I didn't know who he was

1 talking about. And then I finally figured it out, that it
2 was Darrell Berning, Detective Berning. He said he called
3 him and told him he was being eliminated from the
4 investigation and said he is -- no matter what happened, he
5 is content. He is not going to break down. He prays every
6 day. Praying very hard every day that this guy will break
7 down. He or this -- that God will put the burden on this
8 guy's heart so he will break down and confess. And he said
9 God is going to make the guy come forward and confess. I
10 have got friends that know I didn't do it. God and my
11 friends know that I didn't do this. That's all that matters
12 to me. He says he has dug deep, he has tried to think if he
13 said something when he knows he didn't do the crime. You
14 know, maybe people thought he was just running around trying
15 to be Rambo or something like that. He says if I get
16 roasted, you have a killer running around out there. May
17 God strike my little girl dead if I'm lying. Just tried to
18 get this thing going, get us to focus on something, can't
19 give us anything solid. All he knows is he was not on the
20 State Hospital grounds.

21 He heard that there was a guy in the Penitentiary that
22 knew what happened. The guy was really scared. That the
23 guy was saying that it was car burglary. He said that just
24 doesn't fit. He was buying all the best dope in the world
25 at that time, driving a real nice car, the car thing just

1 didn't fit. He has his suspicions why Keerins would say
2 things like that. He is trying to remember, you know, if he
3 saw somebody all tweaked out. "Tweaking" meaning high on
4 methamphetamines. Trying to remember if someone was all
5 tweaked out running around with blood spots on their shoes,
6 that type of thing. Maybe running from the scene because he
7 heard that someone was maybe running away from the scene. I
8 said what if we had someone that said they saw you running
9 from the scene. He said, well, I would say they were lying.
10 I drive a twelve thousand dollar sports car, I don't run
11 nowhere. I would say they're lying because I drive a twelve
12 thousand dollar sports car, I don't run anywhere. I drive
13 right up in people's yards and get out. He says he knows
14 that he wasn't running. And then he ended the conversation
15 by saying I'm through. Let's go. And that was about
16 9:40 p.m.

17 Q Okay. Did you have a conversation with
18 Mr. Gable before you left that evening?

19 A Yes, I did.

20 Q And what was the nature of that conversation?

21 A Well, after we ended the conversation we went
22 into the lunch room there at the jail to have a cup of
23 coffee and we were talking to Frank, he was telling us that
24 he would wear a wire, go to work for us. Help us get this
25 guy. He was in a good mood, laughing and joking, shaking

1 our hands. I asked him if he minded if I come back, again,
2 and talked to him. He said no. He said -- he had asked me
3 if I would check on Janyne for him, his wife, because he
4 hadn't heard from her. She hadn't written to him. He
5 hadn't heard from her and he was wondering what was going on
6 with her. And I told him I would do that.

7 Q When was the next time you talked to Mr. Gable?

8 A I talked to him again on December 22nd and
9 December 23rd.

10 Q And where did that conversation take place?

11 A That conversation took place in the same
12 location. Coquille. Coos County jail, Coquille.

13 Q Very same room?

14 A Yes.

15 Q Okay. And who was present during the December
16 22nd conversation?

17 A It was just --

18 Q Pardon?

19 A Just myself.

20 Q And how did you happen to be there on that
21 particular date and time?

22 A Well, I went down there on my own that time. It
23 was right before Christmas and I hadn't talked to Mr. Gable
24 for six weeks or so and I knew that he would probably be
25 down because it was Christmas. He had asked me to talk to

1 him or find out about Janyne, which I told him I would do.
2 So, I went down to talk to him.

3 Q About what time did you contact him on that day,
4 sir?

5 A That was on the -- December 22nd at 9:30 a.m. in
6 the morning at the Coos County jail in Coquille.

7 Q Before you talked to him, did you advise him of
8 his constitutional rights?

9 A Yes, I did.

10 Q What rights did you advise him on that
11 particular time?

12 A I advised him that he had the right to remain
13 absolutely silent. That anything he said can be used
14 against him in a court of law. He has a right to a lawyer
15 and have the lawyer present with him while he is being
16 questioned if he wishes that. He can interrupt the
17 conversation at any time. Do you wish to talk to us? He
18 said he wished to talk to me, and that he would voluntarily
19 talk to me at that time.

20 Q Okay. At that time what was Mr. Gable's
21 emotional state? His attitude on that particular day, that
22 morning?

23 A He seemed in a pretty good condition. He wasn't
24 under the influence of alcohol or drugs or anything like
25 that.

1 Q Okay.

2 A But, I mean, he seemed in fairly good spirits.

3 Q Okay. Wasn't suffering from any physical or
4 mental disability that you were aware of?

5 A No, he wasn't.

6 Q Did you promise him anything at that particular
7 time?

8 A No, I did not.

9 Q Did you threaten him in any way, sir?

10 A No.

11 Q Offer him any inducements in order to gain --
12 get him to talk to you?

13 A No, I didn't.

14 Q What specific questions did you ask him and what
15 did he respond? What did you talk to him about?

16 A Well --

17 Q How long did the interview take place on that
18 particular day, I guess?

19 A Pardon me?

20 Q How long did that interview take place on the
21 22nd of December?

22 A Approximately two hours on the 22nd. 9:30 until
23 about 11:30, I believe.

24 Q Okay. What did you talk about?

25 A Well, basically, I told him that we weren't

1 going to talk too much about the murder other than that we
2 had a person that we believed had seen him stab Michael
3 Francke in front of the Dome Building. That I had a couple
4 of lists of names that I wanted to kind of run by him. I
5 would ask him some questions about those people and one of
6 which -- one of those persons was a person that supposedly
7 saw him stab Michael Francke in front of the Dome Building.

8 Q Why don't you go about doing that -- why did you
9 do that?

10 A I wanted to just kind of go through the names.
11 I wasn't going to tell him who it was, and kind of look for
12 any response that he might give me or, you know, verbally or
13 otherwise to see what his reaction would be.

14 Q Okay. And did you do that?

15 A Yes, I did.

16 Q What did you do? Who did you talk about?

17 A Well, I told him I had these two lists of names.
18 I went through the list of names. I said could Ricky J.
19 Kessell have seen you stab Michael Francke in front of the
20 Dome Building? And the same question each time. And I
21 inserted other, Ron Bissonnette, Pam Winn, Jodie Swearingen,
22 Bill Storm, Shelli Thomas and Dennis Gause, G-A-U-S-E.

23 Q Is this some specific technique that you're
24 aware of?

25 A Well, it's just -- it's an interviewing

1 technique our department teaches, you know, looking for body
2 verbal, nonverbal gestures that people make based on
3 studies, behavioral science type studies how people react
4 when you ask them things that may produce a response.

5 MR. ABEL: Your Honor, I'm having an awful hard
6 time hearing. I wonder if the detective could speak up a
7 little bit.

8 THE COURT: Move the microphone closer.

9 MR. BOSTWICK: Detective Ackom, if you could
10 just tell us the specific question you used in this
11 particular technique with the particular name and tell us
12 the reaction that Mr. Gable had or didn't have to each
13 particular name?

14 THE WITNESS: Well, I went through each name. I
15 said did Ricky J. Kessell see you stab Michael Francke in
16 front of the Dome Building?

17 Did Bissonnette see you stab Michael Francke in front
18 of the Dome Building?

19 Did Pam Winn see you stab Michel Francke in front of
20 the Dome Building?

21 Did Jodie Swearingen see you stab Michael Francke in
22 front of the Dome Building.

23 Did Bill Storm see you stab Michael Francke in front
24 of the Dome Building?

25 Did Shelli Thomas see you stab Michael Francke in

1 front of the Dome Building?

2 Did Dennis Gause see you stab Michael Francke in front
3 of the Dome Building?

4 MR. BOSTWICK: What was his reactions to those?

5 A And during the question -- questions, he
6 maintained a -- perfect eye contact, he looked right at me.
7 He had a big toothy grin like he was really anticipating
8 listening to the questions. When I got to Jodie Swearingen
9 on the list, he kind of leaned back in his chair, he crossed
10 his arms, he looked down, his pupils looked down to the
11 left. And on all of the other names, he gave no response
12 whatsoever. He just looked straight at me. And that's the
13 only response he gave, was on Jodie Swearingen.

14 Q Did you give him another list of names?

15 A Yes. Then I told him that there was a second
16 list of names. We just went right into the second list of
17 names. And this -- those names, I just gave him the names.
18 It was Doug, Munchy Scritchfield Jason Farm, Kenny Farrell,
19 Cappie Harden, Randy Studer, Kris Warilla and Robert Cornet.
20 Before I got half way through that list of names, he said,
21 "That Jodie gal, the bitch is saying she saw me run from the
22 scene, isn't she?" I continued -- I told him that I wasn't
23 going to tell him who the person was, and didn't tell him
24 who the person was. That we would just go on and talk. I
25 knew that -- I said, "Maybe you don't want to talk about the

1 murder, we'll just talk about an alibi, where you were that
2 night." And, basically, the rest of that interview had to
3 do with an alibi as to where he was that night.

4 Q Where did he tell you he was?

5 A Well, I wanted to find out if he knew a John and
6 Kelly Bender. He said I don't know any John and Kelly
7 Bender. I do know a John and Kelly. We kind of went around
8 about having him explain to me -- he said they lived in a
9 big white house over behind the Circle K store on Hyacinth
10 Street in Salem and I knew that to be John and Kelly
11 Bender's place. I wanted to see if he could have been there
12 on the night of the 17th because a lot of the people that we
13 had been talking about him to were there, going there a lot
14 around that time. He said that he -- I said, "Could you
15 have been going there over the 17th or on the night of the
16 17th?" He said he was going there every night, four or five
17 nights in a row over the 17th. He very well could have been
18 there on the night of the 17th. He was taking dope deals to
19 the Hyacinth Street house. He would drive up and park out
20 front. If he felt comfortable with the person that he was
21 taking there, he would take them in and then introduce them
22 to John and Kelly. Otherwise, he would have them sit out in
23 the car and wait for him there.

24 I asked him about Mickey Goss, could Mickey Goss have
25 been there the night of the 17th. He said he could have

1 been, but I think Mickey was gone at that time. He had told
2 me earlier in an earlier interview that Mickey had been
3 staying with him around that time, but he thought he was
4 gone. He went on to say that Mickey was a real spinner.
5 Went crazy on crank. He would imagine people were climbing
6 light poles or he would imagine monkeys were climbing light
7 poles and that sort of thing.

8 We talked about a lot of different people that may
9 have been at the Bender's that night. He said if this was a
10 car thing, John and Kelly Bender were really into the what
11 they call crash and dashing. Breaking into cars and
12 stealing what they can and taking off and running. He said
13 they had the tools and equipment to do that. They would go
14 all over town and come back in a short time and had all
15 kinds of equipment with them that they had gotten out of
16 cars and so forth.

17 He said that the first time that he met Nick DeSantos
18 and Kris Warilla was at the Hyacinth Street house or the
19 Bender's house on or about the 17th because he said he had
20 been going there four or five nights in a row over that
21 period of time.

22 Q Did he talk about Jodie?

23 A Yes. I asked him if Jodie had been there and he
24 said she very well could have been there but he didn't meet
25 her until July and then he changed that for the first time.

1 He said, well, maybe he did meet her like as early as March
2 or February over at Dennis Gause and Shelli's. Dennis was
3 -- that is Shelli Thomas. Dennis and Shelli were together
4 then, and he may have met her over there. She was with
5 Munchy. He recalled the incident by saying that when he was
6 over there, they ran -- the police came out and ran record
7 checks on he and Dennis and that's how he identified as to
8 when he was there. He may have seen her there. Well, and
9 he also said that Shelli and Dennis had gotten in a fight is
10 why the police came out there that day. And then I just
11 asked him who else might have been there and he went into
12 quite a few different people, Ed Galliger could have been
13 there. He said Janyne knew a lot of these people that could
14 have been there. Jerry, the eskimo, he lives over on Fisher
15 Road and Sunnyview. Mark Guss could have been there. He
16 said that he and Mark Guss went out to see a guy by the name
17 of Mike Simms who had a safe job down in Albany. Mike was
18 at the Tiki Lounge here in Salem. He went over there to get
19 some heroin from him because Mike's girlfriend, Renee, was
20 there. They had pulled a safe job down there in Albany and
21 they came up to do this heroin deal.

22 And at this point I noted that just out of the clear
23 blue and it didn't mean much to me at the time, but he said
24 if anyone would have seen me that night, I would have been
25 wearing dark sunglasses. Hey, Fred -- he said, "Hey, Fred,

E. R. -414

Frederick E. Acko. D -

7570

1 I'll tell you one thing, if anyone would have seen me that
2 night, I would have been wearing dark sunglasses. I always
3 wore dark sunglasses, day or not." And then he said, "Tell
4 me, Fred, who would have thought those guys would have been
5 working that late. Working late that night." And then he
6 went on, picked up the conversation from there telling me
7 about more people that were at the Bender's house that
8 night. He said Pete, a tall guy, real red. Shorty was
9 there a lot. He described Shorty as a biker type. Lived
10 over by the Bus Depot in Salem. I figured that was Shorty,
11 Cappie Harden. He said Vernon, John Kingsly were there a
12 lot. Linda Perkins. Linda had a hot credit card that she
13 got from Earle Childers, described where they lived over by
14 Payless in some apartments over on Ford Street or somewhere
15 over there. And Art Spence, he was living with Sandy that
16 works at the BBQ Pit. He thought Art was in the
17 Penitentiary at that time. He said there were tweakers
18 going to the Bender's. They were coming and going. They
19 were coming out of the woodwork. He could have very well --
20 and then he told me, again, that he could have very well
21 been there on the night of the 17th. Repeated that the
22 first night he met Kris Warilla and Nick DeSantos was at the
23 Bender's around the 17th of January. He could have been at
24 Carl Farms that night, he is not sure. I asked him about
25 Joel Bechtal. He said he hadn't seen Joel Bechtal for ten

1 years. Joel was a guy that did a robbery down in the Coos
2 Bay area or somewhere. If he had seen Joel, he would beat
3 him up. And I asked him about Steve Johnson and he said
4 Steve was from the Coos Bay area and he hadn't seen him for
5 a long time either. He -- Gable, then he further stated
6 that he hadn't seen -- he had never seen Mike Keerins on the
7 street. He only saw him in jail. John and Kelly had had
8 the -- a police hand-held radio at that time, the night of
9 the 17th.

10 Q Detective Ackom, this comment he made about the
11 sunglasses, what were you asking him at that particular
12 time? Were you asking him what he was wearing, what he was
13 doing?

14 A No. It just came out of the clear blue. And it
15 didn't really mean anything to me at the time. But when --
16 later, of course, I realized what he was talking about.

17 Q Well, what specifically did he say?

18 A He said if anybody would have seen him that
19 night, he would have been wearing dark sunglasses. He
20 always wore dark sunglasses.

21 Q And what did he say right after that?

22 A Who would have thought those guys were working
23 that late.

24 Q Was that in response to a question or is he just
25 following that up after he made the comment about the

1 sunglasses?

2 A He didn't explain himself. He just continued
3 talking about who was at John and Kelly's on or about the
4 17th of January.

5 Q Did you conclude the interview on the 22nd at
6 that time?

7 A Yes, I did. It was right before noon. It was
8 about noon, and I knew he would be having lunch and I told
9 him I would come back at one o'clock. However, I didn't
10 make it back at one o'clock that day.

11 Q Why not?

12 A I became ill. I had the flu and I didn't return
13 until the next day at about 2:30 p.m. on the 23rd.

14 Q Had you indicated to him that you were going to
15 come back and talk to him? Was that a planned interview or
16 what were the circumstances of the one on the 23rd?

17 A I told him I was going to come back at one
18 o'clock. I had gotten sick and I knew he would be wondering
19 why I hadn't returned, so I thought on my way home, I didn't
20 check out of the motel that day until about two, I would
21 stop by because I hadn't -- one of the reasons I went down
22 there is he wanted to know about Janyne, we hadn't talked
23 about Janyne at that point. So, on my way home, I stopped
24 at the jail. I told him I was ill. That I, you know,
25 wanted to talk to him.

1 Q Did you re-advise him of his rights?

2 A Yes, I did.

3 Q How did you do that?

4 A I re-advised him of his constitutional rights
5 from a card.

6 Q Did he indicate that he understood his rights
7 and was he agreeable to talk to you, Detective Ackom?

8 A Yes.

9 Q On that particular day, what was Mr. Gable's
10 attitude? Was he willing to talk to you?

11 A Yes, he was.

12 Q Okay. Was he under the influence of any alcohol
13 or any drugs?

14 A No, he was not.

15 Q Did you promise him anything at that time?

16 A No, I did not.

17 Q Threaten him in any way?

18 A No.

19 Q Offer him any inducements?

20 A No.

21 Q How long did this conversation take place?

22 A This was a -- a shorter conversation.
23 Approximately the same amount of time, I guess.

24 Q About two hours or an hour?

25 A Yes.

1 Q How long was it?

2 A I have got to get the right -- yes, it was less
3 than two hours.

4 Q Okay. Started at 2:30 and concluded about four?

5 A Yes.

6 Q Okay. What did you talk about?

7 A Well, we -- it was just a continuation of what
8 we had talked about the day before. He continued talking
9 about the 17th. He said he could have possibly made some
10 telephone calls from Shelli's that night, but they were just
11 to places around Salem, around the Salem area. He said
12 Earle Childers -- he recalled that Earle was working at the
13 handicapped lightbulb place, that Earle had called his wife,
14 Janyne. I guess he meant that night. They were going to go
15 to the AA Welcomaaa Club, I guess that's an alcohol
16 rehabilitation center. He said he thinks he might have
17 taken Jerry to Salem Hospital that night.

18 Q Jerry who?

19 A Well, I assumed he was talking about Jerry the
20 eskimo because that's who he was talking about the day
21 before. He didn't say. He just said Jerry. He thought
22 around that night or -- around the night of the 17th of
23 January. I told him that I didn't want to talk about the
24 murder for a while. I told him I was I will, but that I had
25 told him I would come down there and talk to him about

1 Janyne. He -- I asked him if he had done something to her.
2 He realized what I was talking about, said that if it was
3 about him talking to Les, that's -- Les is -- was his
4 stepfather, the other day, and I -- he said he was just
5 joking around and then he started to weep openly. He said
6 he was upset because Janyne wouldn't write to him. He said
7 that everyone was going around saying that he killed Michael
8 Francke, that if I ever wanted to see what a real killer
9 looked like, he was going to get out of jail soon and he
10 would smoke everyone that he came in contact with. And then
11 he put his finger up to his head like he would blow his own
12 brains out. He wanted to know what Janyne was saying about
13 him. She keeps telling us things, that he killed Michael
14 Francke, that it's just not true. He didn't kill anyone.
15 Stated he wanted to help us. That all we had was a bunch of
16 zeros coming down there. If we were going to arrest him, we
17 would be doing it. I told him, as we did in the past, he
18 wasn't going anywhere. He was already arrested. And his --
19 he said his buddy Robert Cornet that he had been in jail
20 with had been telling him that he didn't have anything to
21 worry about, that all we had was a bunch of circumstantial
22 evidence and so forth.

23 He wanted to know about the eye witnesses he says --
24 that says they saw him kill Michael Francke. He stated, "I
25 know it's that Jodie gal, isn't it? She is saying she saw

1 me running from the scene, isn't she?" He knows -- don't
2 know him very well. He knows exactly where Michael
3 Francke's office is. He used to work there, out at some
4 warehouse near the Dome Building around that time.

5 He stated he wanted to help us, but if someone says
6 that he saw them, but he didn't see them, there is no way
7 because there is no bushes around the Dome Building. That
8 they could see him without him seeing them. Besides, the
9 Dome Building is not well lighted. I corrected him. I
10 said, "Yes, it is well lighted." But I find out later that
11 at the time of the murder it wasn't well lighted, but that
12 was a measure they took after the murder. Gable stated,
13 "Well, nobody saw me because I didn't kill the guy."

14 Q That was the extent of that interview on that
15 particular day?

16 A Yes.

17 Q Did you have any contacts with Mr. Gable in
18 January of 1990?

19 A Yes, I did.

20 Q What date was that, sir?

21 A January 21st, 1990.

22 Q And where did that take place?

23 A That was at the same place, the Coos County
24 jail. Same --

25 Q Same room?

E. R.-421

Frederick E. Acke - D -

7577

1 A It was a different room that time.

2 Q Okay.

3 A Just an interview room. Had a desk and a file
4 cabinet.

5 Q Okay. About what time of day was that, sir?

6 A That was at six p.m. in the evening.

7 Q Did -- did you advise Mr. Gable of his rights at
8 that time, sir?

9 A Yes, I did.

10 Q How did you go about doing that? What rights
11 did you advise him of that time, sir?

12 A I advised him of his constitutional rights from
13 a prepared form, which he refused to sign.

14 Q Did he acknowledge that he knew his rights?

15 A Yes, he did.

16 Q Did he talk to you voluntarily, sir?

17 A Yes, he did.

18 Q Did he appear at this time to be under the
19 influence of any alcohol or any drugs?

20 A No, he did not.

21 Q Did he appear to be suffering from any apparent
22 physical or mental disability?

23 A No, he did not.

24 Q Did you threaten him in any way?

25 A No, I didn't.

1 Q Promise him anything?

2 A No.

3 Q Offer him any inducements?

4 A No, I didn't.

5 Q What was his attitude when you began that
6 interview?

7 A Well, his attitude was relatively good. He was
8 still, I think, confident. He kept saying over and over
9 again that all we had was a bunch of zeros. All we had was
10 a bunch of circumstantial evidence. And the same -- same
11 kind of things that he had been telling us. And I told him
12 that we may have only -- we may only have, you know,
13 witnesses that you consider zeros, but they're all on our
14 team now. They're -- some of them are talking to us. Told
15 him that we had two people that we believe saw him at the
16 scene of the murder. And he, at that time, he didn't want
17 to hear what I had to say.

18 This interview, incidently, was four and a half
19 minutes long approximately.

20 Q Tell us about the four and a half minutes?

21 A Well, it ended real quickly when I started
22 telling him that we had people that were saying that he was
23 at the scene. Saw him. Saw what he did. And he became
24 very animated. He was leaning back in his chair and he was
25 very nervous and popping his neck and moving all around. He

1 just said he didn't -- basically said he didn't want to hear
2 it and he got up and ran out of the room. I would say he
3 was scared. In fact, he was out the door before I even got
4 out of my chair. He was out in the hall. I ran out there
5 because I was in the room alone with him and I didn't know
6 what he was planning to do. He just kept saying he didn't
7 want to hear this. All we had was a bunch of zeros talking.
8 And I said -- I asked him about his buddy, Cornet. "What
9 about your buddy, Cornet?" I had heard that he had been
10 transferred at that time. He said, "Well, he was
11 transferred." And I said, you know, "All we have is --
12 maybe is a bunch of zeros, but they don't want to be around
13 you. They're all on our team now and you're all alone."
14 And he ran about fifteen feet to a phone, grabbed the phone,
15 said, "I'm going to call the jailer to come get me. I don't
16 want to hear this."

17 Q That concluded that interview?

18 A Yes.

19 Q Thank you.

20 That is all of the questions I have of this witness at
21 this time, Your Honor.

22

23

24

25

CROSS EXAMINATION

BY MR. ABEL: We're going to jump back to November 3rd of '89, finish up with the final conversation or interview you had with Mr. Gable.

I think maybe you missed a little bit of this interview when you started out the last time talking to Mr. Bostwick. And, in particular, have you got your transcript there?

A Yes.

Q 74, page 74. Down towards the bottom of the page. Frank told you, "I never said that I killed Michael Francke. I never said that I had knew anybody that killed Michael Francke and I have never said ever I stabbed him because I have never stabbed anybody."

He told you that, again, didn't he?

A Yes. Yes, he did.

Q And he told you that at 4:45 or shortly after 4:45, and that has been his statement consistently during that whole interview, is that right?

A Yes, it is.

Q And then you asked him about five people that I think the Sergeant also talked about, five people that say they -- that he told them that he did it or something such as this, and you asked him about that. Did he respond to

1 you, "If there is five people saying that I told them that,
2 I would say that you have five bona fide liars."

3 Did he say that?

4 A Yes, he did.

5 Q Page 76, Mr. Gable comments, "I know it's a butt
6 charge because you know as well as I do they need to get
7 this over with because there's a lot of heat on you guys."
8 And you said "well," -- and then, apparently, Mr. Gable
9 continued, "to get this over with. It's like coming on down
10 through the line. I mean, I have been told" -- and then,
11 apparently, you interrupted Mr. Gable and you said, "Maybe
12 we don't want to mess up. I mean, it's gone a year or nine
13 months."

14 Is that accurate?

15 A You have got a different transcript than I have.
16 Could you tell me where you're at?

17 Q Maybe you're on 77.

18 A I think you're --

19 Q 75 or 77. Let me look? Do you have more pages
20 in your transcript? Yes, it's 77. And it's towards the
21 bottom of the page on yours.

22 Do you see it down there?

23 A Well, towards the bottom of my 77 is, "Well, if
24 you're doing anything that you weren't supposed to be doing,
25 like getting drugs, selling drugs --" "Yeah, right. Mark

1 would be there. Yeah. Because he is my main connection at
2 the time." Is that what you're talking about?

3 Q No. That's 77?

4 MR. BOSTWICK: 76.

5 MR. ABEL: Have you got a copy of -- of state's
6 exhibit 470 or do you have the original?

7 THE WITNESS: I have the original transcript.

8 MR. ABEL: Well, it should be then on page 76.
9 And it would be about -- I'll show you here. It's right
10 there.

11 A I had just said "We don't have to rest here.
12 You're already rested." "I know it's a butt charge because
13 you know as well as I do they need to get this over with
14 because there is a lot of heat on you guys."

15 Q And then you said, "Well" -- and you,
16 apparently, were interrupted by Mr. Gable?

17 A Yes.

18 Q "To get this over with. It's like coming on
19 down to the line. I mean, I have been told" -- and then you
20 interrupted him, apparently, and your statement was, "Maybe
21 we don't want to mess it up. I mean, it's gone a year or
22 nine months." Is that your statement?

23 A Yes. Yes.

24 Q Okay. Now, after all this time, the very last
25 -- one of the very last things that Mr. Gable said to you,

1 and this is on page 99, "I was not on the hospital grounds.
2 I do not know who killed the guy." This is after -- and
3 this is approximately 9:42 p.m., and so after -- and a
4 hundred pages later and after all of this time, he is
5 telling you the same thing that he is telling you at 4:45,
6 right?

7 A Yes.

8 Q Now, if we go back and just kind of look at
9 these entire processes, I made a little notation here. It
10 appears that at 4:45 you started briefly and talked to
11 Mr. Gable for a while and then Detective Bain took over for
12 a while and then both you and Detective Bain were answering
13 questions or asking questions and then it was turned over to
14 Detective Bain who asked a series of questions for quite a
15 long period of time, and then it's you and Detective Bain
16 again, kind of alternating with questions, and then it's
17 Detective Bain again by himself answering -- asking
18 questions for a long period of time, and then you take over
19 again and then Detective Bain takes over and then we get
20 Sergeant Salle?

21 A Yes.

22 Q And he talks to Mr. Gable, interviews Mr. Gable
23 for about an hour. And finally, you come back in and you
24 take over?

25 A Yes.

1 Q And what it appears to me is like -- and you can
2 correct me if I'm wrong, but the only person that's there
3 participating for the entire length of time in this program
4 is Frank Gable. The rest of you all took a break and so
5 forth, is that right?

6 A Yes. We also asked him to take a break, too,
7 which he did.

8 Q I believe yesterday you indicated to me that you
9 were tired?

10 A Yes.

11 Q But Frank wasn't, is that right?

12 A Well, he called us down there and when he was
13 through he told us he was through.

14 Q Now let's talk a little bit about the things
15 that has happened with reference to Jodie Swearingen and
16 Earle Childers on November 3rd, 1989. You have told us that
17 you asked Mr. Gable about Jodie and Earle Childers, is that
18 true?

19 A Yes.

20 Q On November 3rd.

21 A (Nodding in the affirmative_

22 Q November 3rd. As a matter of fact, we're still
23 talking about it -- let's see who was talking at that time,
24 on page 91, you went -- you went into Jodie Swearingen,
25 again, and we went for a couple of pages, two and a half

1 pages talking about Jodie?

2 A Yes.

3 Q Were you aware that Detective Bain earlier on,
4 on November 3rd, showed Mr. Gable a photograph?

5 A Yes.

6 Q Of Jodie?

7 A Earlier on in this interview.

8 Q And prior to the time he showed Mr. Gable a
9 photograph of Jodie, Mr. Gable said he didn't know who it
10 was. And then he looked at it. Brown haired girl, and he
11 said, "Yeah, I have seen her around. I met her in July," is
12 that right?

13 A Yes. I testified to that.

14 Q And then you also talked about Earle Childers
15 and so did Detective Bain on November 3rd --

16 A Yes.

17 Q Specifically. Specific questions about both of
18 those people?

19 A Yes.

20 Q Now when we go to -- to January, and you're
21 giving him a whole list of names and everything and he sits
22 there and he looks at you, and then all of a sudden when you
23 bring up Jodie he looks at you -- now I know why they were
24 asking me specific questions about Jodie back then. Isn't
25 that a reasonable assumption? He suddenly knows why you

1 were asking him questions about somebody he barely knew?

2 A Well, that is true. But Cappie Harden was also
3 in those list of names. He was focused on Jodie for some
4 reason.

5 Q As I recall your testimony just a few moments
6 ago, he told you that he may have met Cappie once or twice?

7 A That's right.

8 Q Okay. Now, when you talk about the situation
9 with the Bender's, the words I heard the most during all of
10 that little scenario about the Benders and who was there
11 were "could have been." "17th, could have been." "So and
12 so could have been." "He could have been." He never
13 specifically told you that on the 17th he was at the
14 Bender's house, did he?

15 A He said he went there every night. In a row --
16 four or five nights in a row over the 17th, he very well
17 could have been there the 17th.

18 Q He said -- wasn't his language "around the
19 17th?"

20 A He at one point he said "if he was there, he
21 could have been there on the 17th."

22 Q If he -- "if he was there, it could have been."
23 Just like everyone else?

24 A Yes.

25 Q Just like everyone else could have been?

1 A That's right.

2 Q He never said I was there?

3 A He never said I was there. That is true.

4 Q Thank you.

5 The interview on the 23rd. It was quite apparent, was
6 it not, that we're talking about a man that's depressed.
7 When you're talking to him and he is making all of these
8 statements about the things that are bothering him, his wife
9 wouldn't call him and all of these things, very upset and
10 disturbed man?

11 A Yes.

12 Q Did you get the impression that you might be
13 talking to a fellow that kind of believes the whole world is
14 turned against him?

15 A Well, yes. Definitely.

16 Q Okay.

17 A A lot of people were saying things.

18 Q And that certainly is not an abnormal behavior
19 or reactions for somebody that has just been told, well, we
20 have got you now and the whole world is against you. That's
21 the way anybody would behave?

22 A I knew he was depressed. He was crying about
23 his wife.

24 Q Thank you.

25 That is all I have at this time.

REDIRECT EXAMINATION

BY MR. BOSTWICK: Is it true, Detective Ackom,
that -- that at one point he is positive he is at Kris
Warilla's?

A Yes. In the early part of the 11/3 interview in
the transcript he is positive he is at Kris'.

Q And then he was positive he was at home?

A Yes.

Q And then he is not so positive as to where he is
at all, is he?

A That is correct.

Q But he is positive about where he wasn't?

A That's right. Definitely. "I was not on the
State Hospital grounds." It's in the transcript.

Q How could he be so positive about where he
wasn't if he is not positive about where he is?

A That was my exact thought at that time.

Q Thank you.

That is all I have.

RECROSS EXAMINATION

BY MR. ABEL: Detective, I can tell you
absolutely, for certain, positive, that on January 17th,
1989, I was not on the hospital grounds. Does that seem
weird to you?

A I can tell you that, too.

Q Thank you.

No more questions.

THE COURT: Anything else, Mr. Bostwick?

REDIRECT EXAMINATION

BY MR. BOSTWICK: The people that you talked to about him on -- in December on the list, were some of the same people you talked to him about in November, some of the same people you talked to him about in September of 1989, is that correct?

A Yes. That is correct.

Q Did he key onto any of the other names on that particular list? Same people you talked about in November, same people that you talked about in September?

A No, he did not.

Q The only -- what was the only name that he keyed on?

A Jodie Swearingen.

MR. BOSTWICK: Thank you.

That is all I have at this time.

E. R. -435

Frederick E. Acke - ReC -

7591

RE CROSS EXAMINATION

BY MR. ABEL: I didn't hear you say anything about the Bender's on November 3rd, 1989. Maybe I didn't read it in the transcript.

MR. BOSTWICK: The Bender's are not on the list, are they?

MR. STORKEL: They are not on the list. We're talking about December 22nd, Mr. Abel.

MR. ABEL: That is all I have.

THE COURT: You may step down. Thank you.

MS. MOORE: Could we break for lunch, Your Honor?

THE COURT: Okay.

MS. MOORE: Thank you.

THE CLERK: 1:30?

THE COURT: Yes. 1:25.

(Jury out) 11:52 - 1:45

1 THE DEPUTY: All rise.

2 THE COURT: Be seated, please.

3 Let's bring the jury in.

4 (Jury in) 1:45

5 THE COURT: Okay.

6 Next witness, please.

7 MS. MOORE: State would call Loren Glover.

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E. R.-437

Loren T. Glover - -

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LOREN T. GLOVER

called as a witness on behalf of the plaintiff, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please.

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: It's Loren T. Glover, G-L-O-V-E-R.

DIRECT EXAMINATION

BY MS. MOORE: And what is your occupation?

A I work for the Oregon State Police.

Q In what capacity?

A I'm a detective.

Q And how long have you worked for the Oregon State Police?

A Approximately eighteen years.

Q And how long have you acted in the capacity of a detective with the Oregon State Police?

A Approximately ten years.

Q Okay. Did you have occasion to assist in the Michael Francke investigation?

A Yes, I did.

Q And, specifically, did you have an occasion to arrest the defendant, Frank Edward Gable?

A Yes, I did.

Q And what date did that arrest occur on?

A 4/8/89 -- '90, excuse me.

Q Okay. And where did the arrest occur?

A I arrested Frank Gable at the Coos County jail.

Q And what time of day was it?

A It was in the early morning hours at 5:09 a.m.

Q And what was your authority for the arrest at

1 that point in time?

2 A I had an arrest warrant for Frank Gable.

3 Q And do you know what charges he was arrested on?

4 A Yes. It was, I believe, six counts of
5 Aggravated Murder and one count of Murder.

6 Q And was that warrant pursuant to an indictment?

7 A Yes, it was.

8 Q Okay. And why don't you tell the jury what you
9 recall when you first got down to the jail and what happened
10 between yourself and Mr. Gable?

11 A Another detective and I contacted Frank Gable,
12 in uniform, and I read the arrest warrant to him; formally
13 arrested him and advised him of his constitutional rights by
14 a prepared Miranda card. Frank Gable told me that he
15 understood those rights and that he had no questions about
16 them. Frank Gable was handcuffed and placed in a marked
17 patrol unit and he was then taken to the Coos Bay Patrol
18 office.

19 Q Okay. Who was the other officer that was
20 present with you at the time of the arrest?

21 A Detective Terry Crawford.

22 Q And at the time that you arrested Mr. Gable,
23 what was his attitude? How did he appear to you?

24 A He was visibly shaken and nervous, kind of pale.

25 Q Okay. Could I show this witness state's

1 exhibit 424, it's a rights card.

2 Would you take a look at state's exhibit 424,
3 detective, and do you recognize that?

4 A Yes, I do.

5 Q And what is that?

6 A This is the rights card I used to advise Frank
7 Gable of his rights on that date.

8 Q And could you basically tell the jury here this
9 afternoon how you advised Mr. Gable of his rights and what
10 occurred in regards to that rights card?

11 A Well, I read his Miranda rights directly from
12 the card. Would you like me to read those rights?

13 Q Could you do that, please?

14 A I read, It's my duty to warn you before you make
15 any statement that you have the right to remain absolutely
16 silent. Anything you do say can and will be used against
17 you in a court of law.

18 You have a right to consult an attorney before making
19 any statement.

20 If you are without funds, you have a right to a court
21 appointed attorney at public expense.

22 You have the right to have your attorney present when
23 and if you do make any statement.

24 You have the right to interrupt the conversation at
25 any time. Anything you do say must be freely and

1 voluntarily said.

2 On the back side, on the other -- reverse side of the
3 card I asked the question, do you understand these rights?
4 He answered yes. I asked him, do you have any questions
5 about your rights? He answered no. I dated the card and
6 the time, was 5:11 a.m., and I signed it, the card.

7 Q Okay. Do you recognize your signature on that
8 card?

9 A Yes.

10 Q At this time I would ask that that be shown to
11 the defense and I would offer it.

12 MR. ABEL: Thank you.

13 Officer Glover, is this the same card that you read
14 from on that morning?

15 THE WITNESS: Yes.

16 MR. ABEL: Okay. And Mr. Gable did not sign it,
17 is that correct?

18 THE WITNESS: I didn't ask him to sign it, sir.

19 MR. ABEL: You just read his rights to him?

20 THE WITNESS: I read his rights to him and I
21 didn't ask him to sign it because he was handcuffed.

22 MR. ABEL: Okay. Thank you. No objection.

23 THE COURT: Be admitted.

24 MS. MOORE: Thank you, Your Honor.

25 After leaving the jail, Detective Glover, where did

1 you take Mr. Gable at that point?

2 THE WITNESS: We placed Mr. Gable in the back of
3 the patrol unit and escorted him to the Coos Bay Patrol
4 office where we transported him to a van and to Detective
5 Bain and Detective Ackom.

6 MS. MOORE: Okay. And then did you do anything
7 while you were at the Coos Bay Patrol office?

8 A Detective Crawford and myself changed out of our
9 uniforms into our plain clothes, and then drove an unmarked
10 patrol unit and followed the van to Lane County.

11 Q Okay. And was there anyone else following you?

12 A Yes. There was a vehicle, unmarked unit, that
13 was -- I'm not sure who was driving, but Major Renfrow and
14 Captain O'Donnell was behind our car.

15 Q So what are the total number of vehicles then
16 involved in this transport?

17 A Three vehicles.

18 Q Okay. And what was the necessity of having the
19 other two vehicles following the van that Mr. Gable was in?

20 A For security reasons.

21 Q Okay. Did you make any stops after you left the
22 Coos Bay Patrol office?

23 A We did stop in I believe it was Gardner at the
24 patrol station there to go to the bathroom and it was locked
25 up, so we continued on to the Florence office where we

1 stopped.

2 Q Okay. And then did you spend any time at the
3 Florence office?

4 A Yes. We spent several hours at the Florence
5 patrol office.

6 Q And what occurred at that location?

7 A Well, we -- again, we went to the bathroom, and
8 placed Mr. Gable in an office that I believe was -- belonged
9 to one of the detectives there, and offered him some coffee
10 and a chance to go to the bathroom, and then began
11 interviewing him and talking to him about this case.

12 Q Okay. What is the room like that he is in at
13 this point in time?

14 A Well, the room is an office setting. It had a
15 desk and windows and a telephone and filing cabinet and just
16 general office supplies.

17 Q Do you recall how large the room was?

18 A It was probably twenty feet by ten feet.

19 Q Okay. During the course of -- at the beginning
20 of this interview with Mr. Gable, did you observe -- was he
21 under the influence of any alcohol or drugs at that point in
22 time?

23 A No.

24 Q Did he appear to be suffering from any physical
25 or mental disability at that time?

1 A No.

2 Q Did you make any threats to Mr. Gable at this
3 point in time?

4 A No.

5 Q Did you promise him anything?

6 A No.

7 Q Give him any inducements to talk with you?

8 A No, ma'am.

9 Q Did he agree to freely and voluntarily talk with
10 you at that time?

11 A Yes. He wanted to talk.

12 Q Okay. Could you tell the jury a little bit
13 about the interaction that you had with Mr. Gable on that
14 particular day?

15 A Well, originally, Detective Ackom was in the
16 room and was interviewing Frank Gable. And up to that point
17 I had no idea that I was going to be a part of the interview
18 process, and Captain O'Donnell asked me if I would step in
19 and see what I could do as far as interviewing Frank Gable.
20 So, I went in and started chatting with Mr. Gable. And --

21 Q Had you ever met Mr. Gable up to this point in
22 time?

23 A No. I had never met Mr. Gable.

24 Q No prior opportunity to interview him?

25 A No.

1 Q Had you observed any of the other interviews
2 done by him or with him?

3 A Excuse me?

4 Q Had you seen or had any contact with him on any
5 other interviews that had occurred prior to this date?

6 A No.

7 Q So did you know much about Mr. Gable at the time
8 that you stepped in to participate in this interview?

9 A I didn't know -- well, I knew some things about
10 his background, but I didn't know Frank Gable and I didn't
11 know really how to approach him as far as interviewing him.

12 Q Okay. So did you take any steps to try to deal
13 with that issue?

14 A Yes. My approach when I went in to interview
15 Mr. Gable was first to establish a rapport with him and to
16 just chat with him and have small talk about whatever he
17 wanted to talk about. I wanted to try to figure out what --
18 what would be the best way to approach this person as far as
19 gaining information from him that I felt would be critical
20 to this investigation. And after a period of time of being
21 in there while Detective Ackom was interviewing him, it was
22 obvious to me that Mr. Gable was in a denial mode and that
23 he was not going to admit anything about being involved with
24 the death of Michael Francke. So, with that in mind, I felt
25 that it wouldn't -- it wouldn't really benefit for me to be

1 real accusatory in my interview process. So, I thought I
2 would take the approach that, well, maybe Frank could at
3 least corroborate in his own words some of the witnesses'
4 statements that we had at that time. So that's kind of the
5 way I approached it.

6 Q Okay. In the course of getting to know or
7 developing a rapport with Mr. Gable, did you talk at all
8 about boxing?

9 A Yes. I knew that Frank had talked in --
10 previously to other detectives or other people about being a
11 boxer, and I had in my past some experience in that sport.
12 And so I -- that's how we kind of started off the -- the
13 conversation at that time, was talking about boxing and --
14 something that he was interested in and that I had a
15 background in, so I kind of knew the right things to say and
16 how to approach him.

17 Q Okay. Do you remember what, if anything, he
18 told you about his own boxing?

19 A Well, he said he boxed at the prison and that he
20 had had several fights. And that he was a pretty good boxer
21 and that he could handle himself, and he was interested in
22 doing that on the outside if he ever got the chance. And
23 that's about it, I guess.

24 Q Okay. Where did you go from there in the
25 interview?

1 A Well, I did a lot of listening at first and I
2 was just trying to figure Frank Gable out and which way to
3 approach him. So there was a lot of time that I wasn't
4 doing much talking. I was listening. And I felt that I,
5 after listening and chit-chatting with him, that I had built
6 up enough maybe rapport with him to start asking him some
7 pointed questions and seeing if I could get some truthful
8 answers.

9 Q And so what did you ask him?

10 A Well, Fred had been talking about the -- that
11 night of the 17th and about what we knew about that night
12 and the witnesses that we had. And there was a witness that
13 I had interviewed about Frank Gable that I knew had been
14 near the scene. And when I arrested Frank Gable I gave him,
15 along with the arrest warrant, a list of all of the
16 witnesses that appeared before the Grand Jury, and I think
17 there was seventy or eighty witnesses on that.

18 Q Was that a list that was attached to the
19 indictment?

20 A Yes.

21 Q And was the indictment attached to the arrest
22 warrant?

23 A Yes.

24 Q Okay.

25 A And so, after Frank continued in this denial,

E. R.-448

Loren T. Glover - -

7604

1 denial, denial, denial mode, I got right up close to Frank
2 and I said, "Frank," I said, "do you realize that we have a
3 witness that can place you at the scene? That saw you drive
4 away from the scene on to D Street and then head up to Park
5 Street and turn left?" And Frank looked at me and said,
6 "Oh, Earle told you that, didn't he." And I said, "Well,
7 Frank, how did you know it was Earle?" And he said, "Well,
8 I knew that Earle worked -- his wife worked over there at
9 the hospital." That was one of the questions I asked him.

10 Q Okay. Why don't you go on and tell them what
11 else?

12 A We talked about whether or not he could have
13 been in that area that night. And he said that he didn't
14 think he was in that area and that he might have been, but
15 he didn't think he was.

16 Q Did he say he sometimes drove by that area?

17 A Yes, he did.

18 Q Okay.

19 A Another situation and information that I had in
20 this case was some information from some other witnesses
21 about an incident where Frank was at a person's residence
22 and there was some things that transpired at this residence.
23 And so -- and I had two or three different witnesses talking
24 about this incident, and I wanted to see what Frank had to
25 say about this incident. So, I mentioned that to him. I

1 said, "Frank, tell me about the time that -- that you were
2 over at Mark's house and Rachel was there." Then he went
3 on to tell me information about that incident, and he told
4 me that he remembered being there and Earle arriving. And
5 Earle had talked to him about being at CDRC, walking away
6 from CDRC which is a Corrections Division Release Center.

7 Q What is a Corrections Division Release Center?

8 A Well, it's a place where inmates go from OCI and
9 the penitentiary when they get outside the walls. And they
10 go there, and it's kind of a -- a place they stay for a
11 period of time until they get paroled. And sometimes they
12 go out on passes from there but, also, they walk away and
13 they escape from there quite often.

14 Q Is it a minimum security facility?

15 A Yes.

16 Q So it doesn't have the big walls and the fences?

17 A It has a fence now. I think they changed it,
18 but at that time, no, it didn't have a fence.

19 Q So lots of people sort of walked away from that
20 place?

21 A Yes.

22 Q So Mr. or Earle indicated that he had walked
23 away from CDRC, that's what Frank was telling you?

24 A That's what Frank Gable told me, that he
25 remembered this time and Earle had told him that he had

1 walked away from CDRC.

2 Q And who's house are they all at when this
3 happens?

4 A Mark's house, Mark Gesner.

5 Q Okay. And what else does Frank tell you about
6 this time when they're all at Mark's house?

7 A Well, I was asking him who was there and he
8 said, "Well, Rachel was there." And I knew where -- how
9 this situation was supposed to be from what other witnesses
10 were telling me, and I said, "Well, where was Rachel in
11 the house?" And he said, "Well, she was in the front room."
12 And I said, "Well, what did you -- you and Earle talk
13 about?" "What did you do?" And he said that he had gave
14 Earle some dope, a hit of dope, and then Mark showed up.
15 And I said, "Well, what did you do then?" "Well, we walked
16 over -- all of us walked over to Becky Dimbat's house." And
17 -- and I said, "What did you do there?" And he said, "Well,
18 we were going to burglarize it, but we decided not to."
19 "What did you do then?" "Well, we walked back to Mark's
20 house." "Who is 'we all' walked over there?" In other
21 words, Earle and Rachel and Mark and Frank.

22 Q Okay.

23 A And they all walked back to Mark's house.

24 Q I said, "Well, what did you do then?"

25 A "Well, Earle and I left." "Well, were you in a

1 car, were you walking?" "We walked." "Well, where did you
2 go?" Well, we -- we walked over to my residence because --
3 I said, "Why did you go over there?" "Because I wanted a
4 shirt. I wanted to get a shirt for Earle. He needed a
5 shirt." And so -- all of this was making sense to me. I
6 then asked him, I said, "Well, on this walk, did you tell
7 Earle that you killed Michael Francke?" "No. I didn't tell
8 him that." "What happened next that you recall?"

9 You know, there was a lot of interaction between Fred
10 and Mr. Gable at that time. I don't remember all of the
11 questions that were asked. I didn't write those down. I
12 wrote down the stuff that I was getting but --

13 Q When did you write down -- when and how did you
14 write down the stuff you were getting?

15 A Well, I wasn't writing it down in the room
16 because I knew that Frank sometimes would get upset about
17 people writing things down in front of him. I didn't want
18 to get him upset. I was trying to keep him in a nice
19 friendly mood, atmosphere, because I wanted Frank to keep
20 talking to me because I wanted to get all of the information
21 that I could from him. I would have talked to him for three
22 days if I could have, but we wanted to talk to him and get
23 as much information as we could.

24 Q How would you go about taking notes?

25 A Well, I would slip out the door. I would --

1 said I have to go get a cup of coffee, I would go out and
2 write this down in the notebook and then I would come back
3 in.

4 Q Okay.

5 A Frank talked about -- I also asked him what kind
6 of clothing or what kind of coat Earle was wearing around
7 that time, and Frank told me that Earle always wore a gray
8 coat. Never saw him in anything else but a gray coat.

9 I asked Frank about where he parked his car when he
10 was over at the Bender's, Bender's residence which is on
11 Hyacinth, and he said he always parked the car across the
12 street next to the curb facing out. And I said, "Why did
13 you park your car that way?" And he said, "Well, because I
14 had a hard time getting it started so I would always park it
15 that way."

16 He continued to say that he didn't do it. That he --
17 he didn't know who did, and wasn't there. And he would get,
18 you know, he would get real open to me when he was in the
19 denial mode and he would kind of laugh and he would say,
20 "Quack, quack, quack, quack, quack." And, "You guys don't
21 have nothing on me," and "I didn't do it. I wasn't there."
22 Then he would laugh.

23 And then, on other occasions, he would -- he would
24 get teary eyed and he would say, you know, "Nobody likes
25 me," and "You guys are just trying to frame me on this

E. R.-433

Loren T. Glover - -

7609

1 case." And -- and he would get teary eyed about that. And
2 all of this time that we're doing this interview, Fred and I
3 were being -- a pretty good friendly basis with this man. I
4 mean, there wasn't -- there wasn't -- there was some
5 accusations and Fred was asking him some pretty pointed
6 questions, and I was asking him questions, too, and he was
7 -- never got mad. Never got mad about -- say, well, we know
8 you did this and it's time you told us about it. He
9 wouldn't get mad about that, he would laugh and say, quack,
10 quack, quack, you guys don't have anything. You have got
11 the wrong guy. And, you know, so there was a lot of -- a
12 lot of that going on.

13 This was a long interview. We did -- we took a break,
14 a lunch break and I -- Frank didn't want to eat anything, he
15 said his stomach was upset. I think he had a milk shake and
16 we had a lunch break and then came back from the lunch break
17 and interviewed him for a couple more hours. And then we --
18 we broke. It was a little after three p.m. and we decided
19 to go on to the Springfield Patrol office which is in Lane
20 County.

21 Q Before we get to that, during the course of this
22 interview did he ever tell you anything about being content?

23 A Yes. I remember -- in fact, I quoted it in my
24 notes. And that was -- and then -- and I think Fred was
25 talking about how he -- he was going to get convicted on

1 this. And Frank said, "Well, I'm content I can do the time,
2 makes no difference to me. Doesn't matter whether I'm
3 guilty or not, I can do the time, makes no difference."

4 Q During the course of this interview, did he ever
5 offer any alibis as to where he was that night?

6 A No.

7 Q Did you talk to him at all about how he was
8 making money during the time of the murder or did he tell
9 you any of that information?

10 A Yes. I remember him talking about being into
11 pounds of dope. That he was selling pounds of dope. And
12 that -- at one time he would say well he wouldn't -- he
13 wouldn't be jockey-boxing cars because he was into pounds of
14 dope, why would he be out there in Michael Francke's car
15 robbing his car when I'm selling pounds of dope. I'm a rich
16 man. And I don't know whether it was Fred or I had asked
17 him, well, Frank, you didn't have any money. You didn't
18 have anything. They took -- took your car away from you and
19 you didn't have anything. You had used clothes. If you
20 were selling pounds of dope, where is all your money? Well,
21 he didn't have much answer for that, but, you know, he was
22 into pounds of dope.

23 And then another time he would say, "Well, I wasn't --
24 I wasn't a crankster, I'm not a jockey-boxer, I'm not a
25 crankster." And then the next breath he would say, "Well, I

1 was tweaking at the time and, you know, I don't remember
2 where I might have been." And, "Give me a break, how can I
3 remember back that far, I was doing dope, tweaking bad." So
4 it was, you know, back and forth getting a lot of
5 inconsistencies about what he was, where he was at and what
6 he was doing at that time.

7 Q Okay. I think you indicated, then, that at some
8 point you took a break?

9 A Took a lunch break.

10 Q Do you remember about what time that was?

11 A It was about -- it was around noon time, one
12 o'clock.

13 Q And then at some point you leave that Florence
14 office and go to Springfield?

15 A Yes. We left about 3:30, 3:20, and started for
16 Springfield.

17 Q And what were the driving arrangements at that
18 time?

19 A At that time, it was decided -- I'm not sure who
20 made the decision, but, I was riding in the van in the front
21 seat with Paul Bain, and Paul was driving, and Fred sat in
22 the back seat with Frank.

23 Q And Fred Ackom, is that who we're talking about?

24 A Fred Ackom, Detective Ackom.

25 Q And where were the other police officers that

1 had originally been on the trip from Coos Bay to Florence?

2 A They were following.

3 Q And do you recall about what time it was that
4 you got into Springfield?

5 A We got into Springfield about 4:50 p.m.

6 Q Okay. And what occurred when you got to the
7 Springfield office?

8 A Then, in Springfield, Sergeant McCafferty was
9 there and we put Frank in a conference room, which is a very
10 large room. It has pop machines and a sink and kitchen
11 stuff in it, and a big large table with a lot of chairs
12 around it, big picture windows in it. And Sergeant
13 McCafferty was in there, and I was in there, and Fred was in
14 there. And Detective Crawford might have been in there, I
15 don't recall. And Detective Bain might have been there, I'm
16 not -- I don't recall that, either.

17 Q Okay.

18 A And we talked to Frank again there at the
19 Springfield office. And he continued to deny his
20 involvement. He was still in the denial. That's all he did
21 was deny. And he said he didn't do it, he wasn't there, he
22 didn't know who did.

23 And at one point in that conversation that we were
24 having in there, Frank Gable said that we had the wrong guy
25 and the killer was still on the street. And Sergeant

E. R. -437

Loren T. Glover - -

7613

1 McCafferty said, "No, Frank, we got the killer sitting right
2 here." And Gable said, "maybe so, maybe not." And I said
3 Frank -- at that time because I figured there wasn't a whole
4 lot to lose at that point, that he was still denying and
5 that he wasn't going to tell us the truth, that I said
6 you're -- I said, "You don't have the guts to tell us about
7 killing Michael Francke." And I said, "You're going to
8 take this to the grave with you, aren't you?" And Gable
9 says, "You bet I am." And then I said, "Of all of those
10 names on that witness list that I gave you," I said, "How
11 did you pick Earle's name out of that, that saw you driving
12 away from the Dome Building?" And he said, "Well, just
13 lucky, I guess." Then at 5:35 p.m. he said, "Maybe I should
14 get an attorney and I don't want to -- that's all I'm going
15 to say." So we concluded the interview at that time.

16 Q And where was he lodged that evening?

17 A He was lodged in the Lane County jail.

18 Q And was that overnight?

19 A Yes.

20 Q And then where did he proceed or where was he
21 taken the next morning?

22 A He was picked up at the Lane County jail and
23 taken to the Marion County courthouse for arraignment.

24 Q Were you present at the arraignment, Detective
25 Glover?

E. R.-438

Loren T. Glover - -

7614

1 A Yes.

2 Q And after Mr. Gable was arraigned, what happened
3 to him?

4 A He was taken to the Marion County jail.

5 Q And did you participate in that process?

6 A Yes.

7 Q And did you book him at the Marion County jail?

8 A Yes.

9 Q And can you tell the jury what it means when you
10 book an individual?

11 A It means that you place the suspect in the
12 custody of Marion County Corrections, and you fill out a
13 booking form and list the reasons for his arrest, what you
14 arrested him for, and physical information.

15 Q Okay. And did you do that on the defendant,
16 Frank Gable?

17 A Yes.

18 Q Can you tell the jury what his height and weight
19 was?

20 A His height was six foot one, weighed one hundred
21 and seventy-five pounds.

22 Q And are you aware of his date of birth?

23 A Yes. It's 8/28/59.

24 Q And can you show -- show this witness state's
25 exhibit 475?

E. R. -439

Loren T. Glover - -

7615

1 Do you recognize that, Detective Glover?

2 A Yes. I recognize this person.

3 Q And can you tell the jury what you're looking
4 at?

5 A Michael Francke.

6 Q Okay. Does that appear to be a true and
7 accurate representation of Mr. Francke when he was alive?

8 A Yes.

9 Q I would ask that that be shown to the defense,
10 and I would offer it at this time.

11 MR. ABEL: Do you know when this photo was
12 taken?

13 THE WITNESS: No, I don't.

14 MR. ABEL: When was the last time you saw
15 Michael Francke?

16 A I only met Michael Francke one time, and I
17 believe that was in 1987 or '88.

18 Q '87/'88?

19 A Somewhere around there.

20 Q You didn't even see him at all in '89?

21 A Well --

22 Q January of '89?

23 A There was only seventeen days.

24 Q Yeah. January of '89 --

25 A What?

1 Q In January of '89, did you see him at all?

2 A No.

3 Q In late '88, did you see him at all?

4 A I don't recall the exact date. It could have
5 been '87 or '88.

6 Q Your Honor, I don't know what this is offered
7 for, but I don't think there is a proper foundation at this
8 point.

9 MS. MOORE: Your Honor, he indicates it is a
10 true and accurate representation of the victim when he was
11 alive, and I believe ORS 41.415 allows it.

12 THE COURT: I'm sure it is allowed. This
13 witness has told us, though, that he only met Mr. Francke
14 once and it was 1987 or 1988. I guess that picture would
15 tell us that is the way he looked in 1987 or 1988.

16 MS. MOORE: It's -- the statute just indicates
17 in a homicide prosecution the prosecutor may offer a picture
18 of the victim living to show the jury basically the general
19 appearance and condition of the victim.

20 MR. ABEL: I would just say this in support of
21 my objection, it's entirely possible for any one of us to
22 lose in a year or a year and a half's time frame twenty,
23 thirty pounds or gain thirty or forty or twenty or thirty
24 pounds of weight, and you have to have at least some idea,
25 some background to support that in January of '89 that

1 photograph properly depicts Mr. Francke.

2 MS. MOORE: Your Honor, that's not what the
3 statute requires. It merely requires it may be offered by
4 the district attorney to show the general appearance and
5 condition of the victim while alive. And that man is alive.
6 This -- that picture --

7 THE COURT: I agree. If that is what you're
8 offering it for, I'll accept it as a picture that this
9 witness recognizes as the way Mr. Francke looked at the time
10 that he saw him in 1987 or 1988.

11 MS. MOORE: That's what -- will it be admitted,
12 Your Honor?

13 THE COURT: Yes, it will.

14 MS. MOORE: Thank you.

15 I would ask that it be --

16 THE COURT: For those purposes.

17 MS. MOORE: That it be shown to the jury.

18 Thank you, Detective Glover. I have nothing further
19 at this time of this witness, Your Honor.

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CROSS EXAMINATION

BY MR. ABEL: Good afternoon, detective.

Were you present at the Francke task force meeting the day prior to -- and what was that, April 8th, when you arrested Mr. Gable?

A April 8th, yes.

Q There was a task -- were you aware there was a Francke Task Force meeting in Salem at the Salem OSP office?

A I think in my notebook I have briefing. I don't know that that's what you mean.

Q My question was, were you there or not?

A I was at a briefing, yes, sir. The day before.

Q Who was all there?

A I don't have that in my notebook. I don't know.

Q Did you discuss the procedure for transporting -- for arresting Mr. Gable and transporting for arraignment?

A My recollection is that I was told that I was going to be in uniform to arrest Frank Gable, and that I would pick up a marked patrol unit at the Coos Bay Patrol office and arrest Frank, and then transfer him to a van at the patrol office and then follow in an unmarked car.

Q Did you see Mr. Gable in January of 1989?

A January of 1989?

Q Yes.

1 A No.

2 Q Did you ever know him?

3 A No.

4 Q When was the first time you ever came
5 face-to-face with Mr. Gable?

6 A At that interview at the Florence Patrol office.

7 Q Well, actually, when you arrested him?

8 A Oh, when I arrested him.

9 Q Okay. Prior to driving down to Coos Bay -- did
10 you drive down the night before and stay overnight?

11 A Yes.

12 Q So you drove down on the 7th?

13 A Yes. It's a long drive.

14 Q Who did you go with? Was that --

15 A Detective Crawford and I.

16 Q Anybody else drive down that evening?

17 A I believe Detective Ackom showed up sometime
18 later at the motel.

19 Q And then I believe you indicated you picked
20 Mr. Gable up, completed the arrest procedure at about a
21 little after five, 5:05 or something like that?

22 A Yeah. 5:09 is the time that I have for making
23 the arrest.

24 Q And then you used a marked patrol car to
25 transfer Mr. Gable to the Coos Bay Oregon State Police

1 office, is that right?

2 A Yes.

3 Q And you mentioned handcuffs. Were -- was a
4 belly band and leg irons used?

5 A Leg irons and belly chains.

6 Q Would you tell the jury, please, what I'm
7 talking about when I talk about handcuffs, leg irons, belly
8 bands?

9 A Well, leg irons would be like handcuffs except
10 it has a little longer extension in between. And belly
11 chain would be a chain that goes around the belly, and it
12 has a handcuff attached on each side so the hands can't go
13 up.

14 Q When you're in a situation like that with that
15 belly band, how much movement do you have?

16 A Not very much.

17 Q Okay. And as you drove from -- how far is it
18 from the police or from the jail to the police station?

19 A About thirty minutes.

20 Q Okay. And he was in the back of the car, like
21 this during that period of time?

22 A Yes.

23 Q When you arrived, he did not go into the police
24 station, you transported him -- transferred him directly
25 from the marked patrol car into the transport van that was

E. R. -465

Loren T. Glover - -

7621

1 to take him to Salem?

2 A Right.

3 Q At that time, was he still in handcuffs, leg
4 irons and a belly band?

5 A That is my recollection, yes.

6 Q The first part of the trip you did not go in the
7 van, you followed behind with Detective Crawford?

8 A Correct.

9 Q How long did it take to get from the Oregon
10 State Police office to the Florence Oregon State Police?

11 A About an hour.

12 Q To the best of your knowledge during all of that
13 time was Mr. Gable in handcuffs, belly band and leg irons?

14 A Well, I was following in a car.

15 Q You don't know?

16 A I don't know.

17 Q Okay. When he was interviewed at the Florence
18 office, approximately how long did the interview process
19 take?

20 A Well, we arrived at the Florence Patrol office
21 at about 7:45 in the morning. We had a little break at the
22 beginning, so I would suspect our interviewing, you know,
23 started about 8:00, 8:15, and then we continued until noon
24 time where we took a lunch break, and it was an hour or hour
25 and a half lunch. But, again, all -- you know, during this

1 time we're -- everyone is taking breaks if they want one.
2 And then from one until about 3:30, when we left. Whatever
3 that adds up to.
4 Q Is your testimony that primarily the questioning
5 or interrogation was conducted either by yourself or
6 Detective Ackom?
7 A Well, the interviewing was, yes.
8 Q By one or the other of you? Was there anybody
9 else that --
10 A I think Detective Bain poked his head in one
11 time, but that was just for a moment and then left.
12 Q What was his status, confinement status while
13 this interview process was going on?
14 A Well, he still had his leg chains on, but he
15 didn't have the belly handcuffs on.
16 Q Okay. And when did you leave the Florence
17 station?
18 A We left at about 3:30, 3:20.
19 Q When did you arrive in Springfield?
20 A 4:50.
21 Q Do you know why you went to Springfield?
22 A Why we went to Springfield?
23 Q Right?
24 A Because we were going to lodge him in the Lane
25 County jail.

1 Q Was there a particular reason that you're aware
2 of? If you're not aware of one, that's --

3 A Well, my recollection is that we were trying to
4 avoid the press as much as we could. We didn't want a lot
5 of publicity, as we had throughout this case. And that was
6 the main reason.

7 We stopped at the Springfield patrol office because
8 Frank was still talking to us, and it has been -- it has
9 been my history as being a detective that when you have a
10 suspect that is still talking to you, you talk to him until
11 he doesn't want to talk anymore.

12 Q Prior to your interviewing process in the
13 Florence Patrol office, had you read any other interview
14 reports as far as Mr. Gable was concerned or were you aware
15 that he had been interviewed by other Oregon State Police
16 Officers?

17 A I'm not sure I understand the question.

18 Q Did you prepare yourself to go down and -- and
19 do the arrest procedure and transport procedure by reading
20 reports that were taken by other Oregon State Police
21 Officers?

22 A No. On the contrary, in fact. I testified to
23 that. When I was at the Florence Patrol office, I had
24 Captain O'Donnell walk up to me and say, hey, why don't you
25 go in and interview this guy. This was a surprise to me.

1 So that was my reason for going in there cold like this and
2 -- to try to figure out how to approach this guy. And --
3 and I had some certain things in my mind that I knew in the
4 investigation as far as witnesses that I had interviewed,
5 that I knew certain facts about this case. And that's the
6 way I approached Frank Gable.

7 Q So, obviously, then, you were not aware that
8 Detective Bain and Detective Ackom, on November 3rd, 1989,
9 had a lengthy interview with Mr. Gable, is that true?

10 A Well, yeah. I knew there was an interview.

11 Q You didn't know the content of that interview?

12 A Well, just parts of it, yes.

13 Q You did not know, I assume, that during the
14 course of that interview, Earle Childers' name was brought
15 up repeatedly in connection with the question you had asked
16 him in Florence? You weren't aware of that, were you?

17 A No.

18 Q Now, I would like -- your phrase, the denial
19 mode. Is it -- by that denial mode, that means in your mind
20 that anyone that is accused or is a suspect in a crime and
21 says he didn't do it, that is what you call a denial mode?

22 A Well, could you rephrase that question? I don't
23 know how to answer it.

24 Q Okay. Maybe you can -- maybe you can phrase the
25 question. What is a denial mode in your mind?

1 A Well, I have been a detective for ten years and
2 I have interviewed a lot of suspects that I believed were
3 guilty of the crime that I was interviewing them for and
4 they denied it. And they denied it and they denied it and
5 they denied it, and kept denying it. And a lot of times
6 they never tell the truth. They never confess to the crime.
7 And that's what I mean about denial.

8 Q Is there any possibility in your mind that
9 somebody is denying because they didn't do it?

10 A Certainly.

11 Q Were you aware of the fact that Mr. Gable has
12 been in what you call a denial mode since the very first
13 time he was ever contacted regarding this death?

14 A Well, my understanding is that Frank Gable has
15 never confessed to this crime.

16 Q That is all I have. Thank you.

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REDIRECT EXAMINATION

BY MS. MOORE: Detective Glover, on that particular date, April 8th of '90, what had you just arrested Mr. Gable for?

A What did I --

Q Charges?

A What did I arrest him for?

Q Yeah?

A Aggravated Murder and Murder. And there were several counts of Aggravated Murder.

Q And is it customary to transport people with belly chains, leg irons and handcuffs?

A Yes.

Q And is that, in fact, a customary way of bringing in, for instance, prisoners from the institutions when they have to come downtown to the courthouse for trials or court proceedings?

A Yes.

Q Is that a fairly standard way of dealing with prisoners?

A Yes.

Q Anything unusual about the fact that you -- Mr. Gable was restrained on this particular occasion in that manner during this transport?

1 A Well, a little unusual because I felt
2 uncomfortable taking the -- the handcuffs off of him when we
3 were in the Florence Patrol office. I didn't want this guy
4 to escape, and I was uncomfortable. I wanted to keep them
5 on.

6 Q But, in fact, they were removed during that
7 period of time for the interview?

8 A Right. It was for his convenience so he could
9 drink coffee or whatever, go to the bathroom.

10 Q And have you had occasion to arrest and deal
11 with other felons that have been similarly restrained?

12 A Yes.

13 Q Was Mr. Gable treated any differently than other
14 prisoners over the years that you have had to deal with?

15 A Mr. Gable was treated as good or better than
16 other people I have dealt with.

17 Q In terms of restraints?

18 A Yes.

19 Q Thank you, Detective Glover.

20 I have nothing further.

21 MR. ABEL: Nothing further, Your Honor.

22 THE COURT: You may step down. Thank you.

23 MS. MOORE: Might this witness be excused at
24 this point?

25 MR. ABEL: I do believe we have the detective

1 under subpoena, is that correct?

2 THE WITNESS: Yes, sir.

3 MR. ABEL: So, for today, yes.

4 THE COURT: You're excused.

5 THE WITNESS: Thank you.

6 MR. BOSTWICK: Detective Ackom.

7 THE COURT: And, once again, you have been
8 sworn, and remember you are still under that oath.

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DIRECT EXAMINATION

BY MR. BOSTWICK: Good afternoon, Detective Ackom.

A Good afternoon.

Q Did you have occasion to come in contact with the defendant, Frank Edward Gable, on the day of his arraignment here in the Marion County courthouse?

A Yes, I did.

Q Where did that contact take place?

A That was at the Marion County jail in a small interview room at the -- at the Sheriff's Office.

Q Okay. Where is that, in the basement of the Courthouse?

A In the basement of the courthouse.

Q How did you happen to be with Mr. Gable at that time and place?

A I was the one in the room with him waiting to go up to arraignment that morning just before 8:00 a.m.

Q What day of the week was that, do you recall?

A It was April the 9th, it was a Monday morning just before 8:00 a.m.

Q Okay. How long were you in the room with him?

A Oh, just -- just a couple of minutes, two or three minutes.

1 Q Did you ask him any questions?

2 A No, I did not.

3 Q Did he make any statements to you?

4 A Yes, he did.

5 Q What did Frank Gable tell you?

6 A He was shaking his head from side to side, he
7 said, "You have got the wrong guy, Fred. I don't know why
8 these people are saying these things about me. I wish I
9 could tell you I could say things about them. I wouldn't do
10 that. I'm not a rat. The best I can do for you, Fred, is I
11 might have been driving by that night and Jodie and Shorty
12 saw me."

13 Q That's all he said to you?

14 A That was it. I told him it was time to go, and
15 we went upstairs.

16 Q Okay. Thank you, Detective Ackom.

17 That's all I have at this time.

18 MR. ABEL: No questions.

19 THE COURT: You may step down. Thank you.
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1 THE COURT: Are we there?

2 MS. MOORE: We're there, Your Honor.

3 THE COURT: No more for today?

4 MS. MOORE: No more for today.

5 THE COURT: We're not only going to recess,
6 we're going to adjourn for the afternoon. See you Monday
7 morning, 8:55. And, again a reminder, don't forget all of
8 those things I told you -- it's getting to be a long time
9 ago now, but, don't forget all of those things.

10 (Jury out) 2:40

11 THE COURT: Monday morning at 9:00, Mr. Abel.

12 MS. MOORE: Bob.

13 MR. ABEL: What?

14 THE COURT: He's busy now, probably. Monday
15 morning at nine.

16 MR. ABEL: Yes. That's fine.

17 THE COURT: Okay.

18 MR. BOSTWICK: Have a good weekend, Your Honor.

19 THE COURT: You, too.

20 (Proceedings concluded) 2:40

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DIRECT EXAMINATION

BY MS. MOORE: And Mr. Childers, where are you residing right now?

A Marion County Corrections Facility.

Q Okay. And do you know the defendant, Frank Gable?

A Yes, ma'am. I do.

Q And how did you first meet Frank Gable?

A I met him through an acquaintance, Mark Gesner.

Q Okay. And do you recall about when it was that you first met Frank Gable?

A November, December of '88.

Q Okay. And how long -- at the time that you met Frank Gable, how long had you known Mark Gesner?

A About a year and a half before that, I suppose.

Q Okay. Do you recall how it was that you met Mark Gesner?

A Yes. I was managing a convenience store and he was working for me. He was an employee.

Q Okay. Did your association with Mr. Gesner ever develop beyond simply working together at a convenience store?

A Yes, it did. We grew into a friendship.

Q What was this period of time in your life, did

1 you have a problem with drugs?

2 A Yes, ma'am. I did.

3 Q Okay. And were you -- what was your drug of
4 choice, basically, during the period of time of 1988 early
5 1989?

6 A Mainly Dilauidids.

7 Q Can you tell me and the jury a little bit about
8 what Dilauidids are?

9 A They are a synthetic type of heroin morphine
10 base. It's a very strong pain medication they give to
11 people with a great deal of pain.

12 Q People that what?

13 A With a great deal of pain.

14 Q How would you obtain the Dilauidids?

15 A I was forging prescriptions. I would go around
16 --

17 Q And was Mr. Gesner aware that you were forging
18 prescriptions to get Dilauidids?

19 A Not until sometime later in our relationship.

20 Q Okay. And when did he become aware of that or
21 how did he become aware that you had this problem with drugs
22 and were using Dilauidids?

23 A When he was no longer working at the store and I
24 was having some difficulty obtaining them, I went to him to
25 see if he could help me out and, in essence, he turned

1 around and started me on methamphetamines.

2 Q Okay. Was that a different drug from the kind
3 you had been taking up to that point?

4 A Yes, ma'am. It was.

5 Q And can you tell us, just explain to the jury a
6 little bit what the difference is between methamphetamine
7 and Dilaudids in terms of what it does to a person that
8 takes them?

9 A The Dilaudids was a pain medication. I was
10 using it because I have a great deal of pain and -- from
11 Viet Nam. Up until this time, I was in hospitals many times
12 and had a lot of different pain medication. I became
13 addicted to pain medication, and started taking the
14 Dilaudids. Well, the Dilaudid has a very bad withdrawal to
15 it, and the methamphetamines will help with the withdrawal.
16 It calms you down, doesn't make you withdraw so bad. And it
17 is a different -- different drug entirely because a Dilaudid
18 makes you go down, makes you sleepy, makes you want to fall
19 in your food, so's to speak, where the crank keeps you up.
20 It's a very high, it gets you going real good.

21 Q Okay. Did your association with Mr. Gesner
22 eventually grow into a situation where it also involved
23 drugs?

24 A Yes, ma'am. It did.

25 Q Okay. And do you recall when the first time was

1 that you actually met Mr. Gable?

2 A Mark had contacted me about getting some
3 Dilaudids. He said somebody wanted some and they would be
4 willing to trade them for the crank. I got the Dilaudids,
5 called Mark and had -- Mark and a friend showed up and
6 picked me up and took me to Frank's house. They went out,
7 traded or sold them, whichever, and brought me back 360's of
8 crank. That was the first time.

9 A At that point in time, were you doing crank
10 instead of Dilaudids?

11 A Yes, ma'am.

12 Q Can you describe, from that point on, did you
13 ever see Frank Gable again after that first time when you
14 traded through Mark Gesner the Dilaudids for the crank?

15 A Yes, I did. There were several other times.
16 One time they picked me up, Mark picked me up over at Izzy's
17 Pizza and took me over to Frank's house. Another time I
18 called Frank's house and got a hold of him, and they picked
19 me up.

20 Q Okay. And what kind of transactions were
21 occurring on these different times that you would meet with
22 Mr. Gable?

23 A I would give them the Dilaudids and they would
24 go try to trade them for crank or money or whatever, and I
25 would just wait and see what happens.

1 Q What would you get back from Mr. Gable in return
2 for the Dilaudids that you gave him?

3 A Usually crank.

4 Q Okay. And how were you getting a hold of the
5 Dilaudids during that period of time?

6 A I was writing bad prescriptions.

7 Q Okay. Can we show this witness state's exhibit
8 319, please? Thank you.

9 Can you take a look at state's exhibit 319 and do you
10 recognize what you're looking at?

11 A Yes, ma'am. It's a house on Hyacinth up towards
12 Portland Road.

13 Q Okay. Had you ever been to that house with
14 Frank Gable?

15 A On the outside. I had gone there with Frank and
16 sat in the car while he was inside before, but I was never
17 inside the house.

18 Q Why did you go over there with Mr. Gable?

19 A To get rid of Dilaudids to get crank.

20 Q Do you recall about when this was that you first
21 had occasion to go with Mr. Gable over to this house for the
22 first time?

23 A I don't recollect exact dates. Sometime --
24 January, February, somewhere around in there, I guess.

25 Q Okay. Had you ever, during the period of time

1 when you were associating with Mr. Gable, observed him to
2 use crank?

3 A Yes, ma'am.

4 Q And can you tell the jury what you recall about
5 observing him using crank?

6 A Well, using crank you get talkative, high
7 strung, paranoid, want more. Just those kinds of things.

8 Q Do you remember how he actually took the crank?

9 A Intravenous. Shot it with a needle.

10 Q Okay. Had you during this period of time of
11 late '88, early 1989, during that period of time, did you
12 have occasion to see Mr. Gable with pounds and pounds of
13 crank at anyone time?

14 A No, ma'am. I never did.

15 Q Did you ever have occasions where it was
16 difficult for you to trade the Dilaudids for crank?

17 A Yes. There was numerous occasions I would give
18 them Dilaudids and end up getting nothing back in return.

19 Q Okay. And did you during this period of time of
20 late 1988 early 1989 ever observe Mr. Gable to carry any
21 knives on his person?

22 A Yes. He carried a couple different knives at
23 different times. He carried a knife, baseball bat in the
24 car. He also carried a brown handled knife like a hunting
25 knife.

1 Q Okay. And where would he carry these?

2 A Under his coat in his belt or in the car.

3 Q And in January of '89 do you recall where you
4 were -- you were actually living that month?

5 A I was living on High Street, Southeast High
6 Street.

7 Q Okay. And were you living with somebody at that
8 period of time?

9 A My ex-wife, now.

10 Q Okay. And where did your ex-wife work during
11 January of '89?

12 A At General Hospital.

13 Q And where is the General Hospital located?

14 A On the same grounds as the State Hospital and
15 the Dome Building.

16 Q Okay. And were you on parole during that period
17 of time?

18 A Yes, ma'am.

19 Q Did you have any programs that you attended as a
20 result of your parole obligations during that period of
21 time?

22 A Yes, ma'am. I had to attend an inpatient
23 program and then got out and had to attend NA meetings and
24 AA meetings as follow up treatment.

25 Q Okay. And was there a particular place that you

1 would go to attend those NA and AA meetings?

2 A Yes ma'am. I would go to the Welcomaaa Club
3 which is on D Street, corner of D Street, right across from
4 Lancaster Mall.

5 Q And was there any particular time that those
6 meetings occurred that you attended?

7 A Well, there was a five o'clock meeting there
8 that I would usually go to.

9 Q Okay. Now, how would you get to those meetings?

10 A My ex-wife would drop me off on her way to work
11 and I would stay there and then go to the meeting,
12 supposedly.

13 Q And did you always go to the meetings when your
14 wife dropped you off?

15 A No, ma'am.

16 Q Were there occasions when you didn't stay at the
17 meetings?

18 A Yes. There were numerous occasions.

19 Q Okay. And when you didn't stay at the meetings,
20 what would you go do?

21 A I would go out and obtain Dilaudids, drugs,
22 whatever I could do. If I needed to get money, I would go
23 out and maybe shoplift something and try to exchange it for
24 the money.

25 Q And what was the general scenario in terms of

1 when you had to be home basically?

2 A Well, the meeting got over about 6:30, and then
3 I would have to walk home. I would leave the, wherever I
4 was at, at about 6:30 so I could make sure I was at least by
5 the hospital grounds at seven because there was a phone
6 around back and I would once in a while call my ex-wife
7 while I was going by and let her know I was on my way home,
8 but, in either case I had to be home around eight o'clock.

9 Q Why did you feel you needed to be home by eight
10 o'clock?

11 A Because she usually called and I wanted to make
12 sure that I was at home.

13 Q Did you have any vehicle to drive at that point
14 in time?

15 A No, I didn't.

16 Q So how would you get from the Welcomaaa Club
17 across from the Lancaster Mall to your home on Southeast
18 High Street?

19 A I would walk.

20 Q Okay. Do you recall the night of January 17th,
21 1989?

22 A Yes, ma'am. I do.

23 Q And do you recall specifically walking home on
24 that particular night to your ex-wife's house on Southeast
25 High Street?

1 A Yes, ma'am.

2 Q May this witness approach the aerial, Your
3 Honor, state's exhibit two?

4 THE COURT: Certainly.

5 MS. MOORE: Can you take a minute and orient
6 yourself to what you're looking at. Do you recognize what
7 you're looking at?

8 THE WITNESS: Yes, ma'am.

9 MS. MOORE: Okay. Now, the jury is behind you
10 so if you can step maybe around to this side. Maybe a
11 little more so I can see as well. I don't know if that will
12 work, I'll try to move over, too. And maybe you could show
13 -- does the place that your wife worked show on this aerial?

14 A Yes, ma'am.

15 Q Could you point that out for the jury?

16 A It's way over here.

17 Q Okay. And you had said something there about
18 there was a phone around back or something, can you describe
19 to the jury what you're talking about?

20 A If I can get over here maybe it's easier. You
21 come around the back side of the building. Here between
22 these trailers, there is a door that goes upstairs and there
23 is a phone right there and you can dial direct up.

24 Q It's not a pay phone or anything?

25 A No.

1 Q Were there occasions when you would call your
2 wife from that location?

3 A Yes, ma'am.

4 Q So now can you show us using -- with the use of
5 the diagram, do you remember about what time it was that --
6 on the night of January 17th, 1989, you were headed home to
7 your house on Southeast High Street?

8 A It would be about 6:30.

9 Q Okay. And do you remember where you're headed
10 from at the time you start finally walking home?

11 A Yes. I was coming from the mall and I walked
12 straight down D Street here, coming down this way here. Is
13 this D Street? No. Up here. Excuse me. Came down this
14 way here.

15 Q Okay. All right. And were you by yourself that
16 night walking?

17 A Yes, ma'am.

18 Q Okay. And what -- was it light or dark out at
19 that period of time?

20 A It was dark.

21 Q Do you have any recollection what you were
22 wearing that particular night?

23 A Yeah, I was probably wearing a black leather --
24 not leather but a black fabric charcoal gray coat and stone
25 wash Levis and white tennis shoes.

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1 Q Do you always wear those kind of clothes?

2 A Yes.

3 Q Is that how you remember what you were wearing
4 that night?

5 A Yes. Just got the coat for Christmas so I know
6 what I was wearing.

7 Q Okay. And with the help of using state's
8 exhibit number two, can you at least at the point where D
9 Street finally appears on that aerial show the jury where
10 you were walking and what you observed, if anything, as you
11 were walking along that evening?

12 A I was walking along here. This is kind of
13 deceiving because like in January, there is nothing on these
14 trees. So, it's kind of -- I was walking along here, I
15 observed a car pull out here, down here by the medical
16 building, come up, turn right and start up D Street. I was
17 in here along in here somewhere. And I recognized the car.

18 Q Okay. And as it went by me --

19 Q Who did you recognize the car as --

20 A I recognized Frank's car.

21 Q And Frank who?

22 A Frank Gable's car.

23 Q Okay. The defendant?

24 A Yes.

25 Q Okay. And did you have an opportunity to

1 observe who, if anyone, was in the car?

2 A Yes. He was in the car alone. I could see as
3 he went by.

4 Q And what direction was the car headed?

5 A The car was headed east.

6 Q On what street?

7 A On D Street.

8 Q Okay. Was anyone in the car with Frank Gable?

9 A Not that I observed, no.

10 Q Okay. And did you observe anything that he was
11 wearing on that period of time?

12 A Yes. He was wearing sun glasses. He wore them
13 all of the time. That's one of the ways I recognized --

14 Q You have to keep your voice up so everyone can
15 hear you. Just repeat what you just said.

16 A He was wearing sun glasses. As he went by me, I
17 could see him kind of -- looking kind of perplexed, but he
18 was wearing sun glasses. He just went right on by.

19 Q Was that unusual for him to be wearing sun
20 glasses at night?

21 A No, ma'am. He wore them all of the time when I
22 remembered him until I saw him in July.

23 Q Okay. Now, did you make any efforts to try to
24 contact him on that occasion?

25 A I waived and yelled and whistled at him. He

1 just continued on going. He didn't stop.

2 Q And why were you trying to get a hold of him?

3 A I had some Dilaudids. I wanted to trade them.
4 I thought maybe I could make a deal with him. He just kept
5 right on going.

6 Q Okay. And did you observe where he went after
7 he went by you that night?

8 A He went straight up D Street to Park Street, I
9 believe it is, at the four way stop and made a lefthand turn
10 and went up that way.

11 Q And what did you do after that?

12 A I just continued on home.

13 Q Okay. And you can go ahead and put the pointer
14 down and resume the stand, if you will.

15 Mr. Childers, do you recall during that period of time
16 what shift your ex-wife was working at the hospital?

17 A Three to eleven in the evening.

18 Q Okay. And do you recall the next day talking to
19 your ex-wife when she came home from work that night?

20 A The following day, yeah. She was real upset.
21 Apparently, the police had questioned everyone working the
22 next day and the fact -- she was worried that she had to
23 walk out to get in her car at night because there had been a
24 murder over on the grounds and it -- it had all of the
25 nurses very scared.

1 Q Was this the night after the night that you saw
2 Mr. Gable driving up D Street that you have just described
3 to the jury?

4 A Yes, ma'am. It was.

5 Q And did you see anything else on the T.V. during
6 that day that gave you similar information?

7 A Yes. There was on the news that somebody had --
8 Mr. Francke had been killed over there at the Dome Building.

9 Q Okay. And those T.V. items, was that the day
10 after you saw Mr. Gable?

11 A Yes, it was.

12 Q Did you ever talk to Mr. Gable again after
13 seeing him that night driving east on D Street?

14 A Yeah. I saw him a day or two later and I
15 commented why, you know, he didn't stop and give me a ride,
16 and he just said forget I ever saw him there. Just forget
17 it. So, I forgot it.

18 Q Did -- he didn't discuss it any further with you
19 at that time?

20 A No, ma'am.

21 Q Okay. Did he ever offer any excuse for why he
22 didn't stop and pick you up that night?

23 A No, ma'am.

24 Q Okay. At some point in time did you leave and
25 go to Reno after this occurred in January of '89?

1 A Yes, I did.

2 Q And why did you go to Reno?

3 A Me and my wife were having problems over my drug
4 usage so I decided to go down to Reno and spend some time
5 with my mom.

6 Q Okay. And about how long did you stay in Reno?

7 A About two weeks.

8 Q Okay. And do you recall about when it was that
9 you came back home to Salem?

10 A Yeah, it was around the 15th or 16th of February
11 of '89.

12 Q And is there a reason you remember that date?

13 A Yeah. My son's birthday is the 15th and I came
14 back right after they had a party for him that night.

15 Q Okay. And after returning to the Salem area,
16 did you see Mr. Gable at all at that point in time?

17 A Yeah. I got back and I got some more Dilaudids
18 and got a hold of him and his ex-wife.

19 Q Okay. And --?

20 A And made arrangements.

21 Q Okay. Who is his ex-wife?

22 A Janyne.

23 Q And so did you continue pretty much the same
24 association with Mr. Gable after you came back from Reno as
25 you had before you went there?

1 A Yes, ma'am.

2 Q After, in February or March of '89, were you
3 aware of any of the people that Mr. Gable was associating
4 with other than yourself and his then wife, Mrs. Vierra
5 Gable?

6 A Well, he knew some of the people like Shelli
7 Thomas or Kris, Shelli's boyfriend, Dave, I guess it is.

8 Q Okay. Do you recall specifically having a
9 conversation with Mr. Gable at one time about Shelli?

10 A Yeah. Her boyfriend was coming back from
11 California and he had a habit of beating her up, I guess,
12 and Frank was kind of close associated with Shelli and said
13 that if he had any problem with him he would just stick him.
14 And I asked him why would you do that, and he said, well, it
15 won't be the first time. And we let it go at that.

16 Q Did you ultimately get arrested again --

17 A Yes.

18 Q Sometime? And do you remember about when that
19 was in 1989?

20 A May.

21 Q Okay.

22 A April or May.

23 Q Okay. Do you recall what you got arrested for
24 on that particular occasion?

25 A Unauthorized Use of a Motor Vehicle and

1 Possession of Controlled Substance.

2 Q Okay. What happened to you after you got
3 arrested on those new charges?

4 A I went back to prison.

5 Q And which prison, specifically, did you go to?

6 A Oregon State Prison.

7 Q Okay. The penitentiary or OSCI?

8 A Penitentiary.

9 Q Okay. When you -- when you get sent to prison,
10 do you serve all of your time at the penitentiary or does
11 there come a point in your sentence when you get sent
12 somewhere else before you're released on the streets?

13 A Yes. After a certain length of time and
14 depending on your custody rating, they can send you to a
15 satellite facility.

16 Q Okay. And did that happen to you on this
17 particular occasion?

18 A Yes. I was sent over to DCRC Release Center.

19 Q Okay. And where is that located?

20 A Up on Aumsville Highway.

21 Q And what is that facility like in relation to
22 the penitentiary from a security standpoint?

23 A It's minimum custody. There is no fences, there
24 wasn't at that time. No fences, weekend passes. They send
25 you out in different areas in the community to work and do

1 things like that.

2 Q Okay. Did you stay at CDRC or DCRC?

3 A No. I walked away from there.

4 Q Okay. Was that an authorized walk?

5 A No, ma'am.

6 Q Okay. Technically, were you on escape status at
7 that point when you walked away?

8 A Yes. That's what they put me on.

9 Q And do you recall when it was that you walked
10 away from DCRC?

11 A It was the 11th of July.

12 Q Of what year?

13 A Of 1990. Of '89, excuse me, of '89.

14 Q Okay. Is there a reason you remember that
15 particular day?

16 A Yes. I just returned from court that day.

17 Q Okay. And did that have something to do with
18 why you decided to walk away from DCRC without authority?

19 A Yes, ma'am. It did. I found out that not only
20 with the sentence that I was given, I was told there was
21 outstanding warrants and a probation violation out of Polk
22 County, and they were going to prosecute me on those.

23 Q And so, did that make you to decide to take off?

24 A Yes.

25 Q When you left DCRC, where did you go?

1 A I left there and went over to Mark Gesner's
2 house on the corner of Maple and Pine Street, walked over
3 there.

4 Q Okay. And who was living there at the time that
5 you went over there to Mark Gesner's house July 11th of '89?

6 A Mark and his girlfriend, Rachel.

7 Q Okay. And did they allow you to stay there for
8 a while?

9 A Yes. The entire time.

10 Q Okay. Now you say the entire time, what does
11 that mean?

12 A Well, until I was picked up again. Returned to
13 custody.

14 Q Okay?

15 A About two weeks.

16 Q About two weeks?

17 A Yes.

18 Q How did you wind up getting picked up and put
19 back in custody again?

20 A I went out and had got a hold of some Dilaudids
21 and was kind of in a super state when they found me at one
22 of the local hotels.

23 Q What kind of state?

24 A Well, I was using Dilaudids. I was very out of
25 it.

1 Q Okay. So they wound up -- did they wind up like
2 calling for medical assistance or something?

3 A Yeah. They took me to the hospital to keep my
4 heart going. Apparently, I had just about OD'd on the
5 Dilauidids.

6 Q Did someone discover you were an escapee or had
7 warrants out for you at that point?

8 A Yeah. The police checked and found out I was on
9 escape status from Oregon State prison and returned me to
10 OSP during that day.

11 Q During this two week period after you walk away
12 from DCRC and before you wound up being picked up by the
13 police again, did you see Mr. Gable during that two week
14 period at all?

15 A Yes, ma'am. I did. While I was at Mark's, he
16 showed up at the door one night, came on in.

17 Q And who all was present when Mr. Gable showed up
18 on that particular occasion?

19 A I was, and Rachel. Mark was not at home.

20 Q Okay. And how long had it been since you had
21 last seen Frank Gable?

22 A Well, probably to me going in to prison in May,
23 I believe it was May.

24 Q Okay. And what basically occurred at
25 Mr. Gesner's residence when Frank Gable comes in, in July of

1 '89?

2 A Well, he came in and we just started hashing
3 over old times, talking, asked what was going on. And it
4 had been mentioned that he had been in jail, I asked him
5 what for. We talked a little bit about that.

6 Q Did he tell you why he had been in jail?

7 A Yes. He said that he was walking down the
8 street one day and a car pulled up alongside and somebody
9 from the back seat pointed at him and then went on and the
10 next day he said he was picked up and put in Marion County
11 jail in a cell with Michael Keerins, and he said he
12 recognized Michael Keerins as the one that had pointed him
13 out in the car, and he said that they questioned him on the
14 Francke investigation and then subsequently released him
15 because they had nothing on him.

16 Q Okay. During this period of time, is there any
17 crank available?

18 A Frank had some that night. He gave me a little
19 bit of what he had left.

20 Q Okay. And how did you take crank?

21 A Same way, IV.

22 Q Okay. And did the two of you shoot up that
23 night while you're having this conversation?

24 A Yes, we did.

25 Q And during the course of it, did you ask him any

1 more about why the police were talking to him about the
2 Francke homicide?

3 A Yeah. We just kind of bantered it back and
4 forth while we were waiting for Mark. And at one point when
5 I came out of the bathroom after doing the crank I asked him
6 if he had done it, and he just kind of gave me a smile he
7 gets on his face and didn't say yes or no, kind of
8 insinuated more yes than more not -- no.

9 Q Okay. Did Mark ever come home that evening?

10 A He showed up about a half hour later, about
11 eleven o'clock. 10:30, eleven o'clock.

12 Q And then did you guys wind up doing anything
13 after Mark got home?

14 A Yeah. We walked over to this house that Frank
15 had talked about over on D Street that he said was ripe for
16 a burglary, and we walked over there, me, Mark -- me and
17 Mark, Rachel and Frank walked over there and kind of looked
18 at the place and then turned around and came back.

19 Q Did you do anything over there when you got over
20 to the place?

21 A No. We just looked and then turned around and
22 walked back.

23 Q And what occurred during this walk back?

24 A Well, we just were talking, Mark and Frank were
25 more or less in the lead talking and me and Rachel were in

1 the back.

2 Q Okay. And after you got home, what occurred
3 when you got back to Mark Gesner's residence?

4 A I asked Frank if I could borrow a couple shirts
5 because I didn't have anything to wear and Mark's clothes
6 didn't fit me. And he said if I wanted to walk over to his
7 apartment he would loan me a couple T shirts or something.

8 Q Why didn't you have anything to wear?

9 A I was on escape and my ex wouldn't even talk to
10 me. She wanted nothing to do with me at that point.

11 Q Did you have some clothes over at your ex-wife's
12 house?

13 A Yes.

14 Q But she wasn't on speaking terms with you at
15 that point?

16 A No, ma'am.

17 Q In fact, did you, in fact, go for a walk that
18 night?

19 A Yes, we did. We left Mark's house and walked
20 over to Frank's residence over behind BiMart, over off
21 Cherry Avenue.

22 Q And who all is on this walk at this point in
23 time?

24 A Just me and Frank.

25 Q Okay. And do you recall any of the conversation

1 that occurred between you and Frank Gable as you are walking
2 from Mark Gesner's apartment to Frank Gable's apartment?

3 A We just kind of talked about things and then the
4 subject came up again about the -- the Francke killing, and
5 we bantered it back and forth and I asked him again if he
6 did it and he told me he had done it. He said that he
7 killed him. And I asked him, well, why? And he said that
8 he was burglarizing the car, going through some cars and he
9 was in Francke's and he got caught and he ended up sticking
10 the guy. And I told him, I said, you're shitting me, you
11 stuck him over a car burglary? He said he was going to take
12 me in and I didn't want to go back to prison. So --

13 Q Did he tell you where or how many times he stuck
14 him?

15 A He just said he stuck him three or four times.

16 Q Did he --

17 A To my recollection.

18 Q Did he tell you where he stuck him?

19 A Just in the chest.

20 Q Did he make any statements, did Mr. Gable make
21 any statements about Michael Francke when he was telling you
22 what he had done that night?

23 A Oh, he made one statement.

24 Q Can you tell the jury, if you remember what he
25 said, what he said about Mr. Francke?

1 A Yeah. He just said Mr. Francke was a cock
2 sucker and now he would always be a cock sucker.

3 Q Did he tell you or did you ask him what he was
4 trying to get out of the car?

5 A He said he was trying to find a gun. That there
6 would be a gun in the car.

7 Q Did he indicate whether he got anything out of
8 the car?

9 A No, he didn't.

10 Q Did he indicate to you how he got into the car?

11 A He said the car was unlocked.

12 Q Okay. Did you -- what happened essentially when
13 you got over to Mr. Gable's apartment on that particular
14 night?

15 A I went in to the apartment. Janyne was there.
16 He lent me a couple T shirts. They seemed to be having a
17 squabble of some sort, so I just turned around and left him,
18 headed back for Mark's.

19 Q Okay. And did you see Mr. Gable again after
20 that night before you got arrested on July 24th?

21 A Yeah. I saw him three or four times after that.

22 Q Okay. Do you know an individual by the name of
23 Dan Walsh?

24 A The name is familiar but -- the name is
25 familiar.

1 Q Do you know if you have ever met him
2 face-to-face?

3 A I couldn't honestly say if I have.

4 Q Okay. And do you recall when the Oregon State
5 Police first contacted you regarding Frank Gable and the
6 Michael Francke homicide?

7 A Yes, ma'am. I was in the Oregon State Prison.

8 Q Okay. And do you remember about what time that
9 was, the very first time they came to contact you about this
10 case?

11 A Sometime in September of '89.

12 Q Okay. And which specific prison were you housed
13 at, at that particular time?

14 A The Oregon State Penitentiary.

15 Q Okay. And did -- after they contacted you, did
16 the Oregon State Police subsequently interview you in
17 September of '89 regarding your knowledge of Frank Gable and
18 the Michael Francke homicide?

19 A Yes, they did.

20 Q At that time, in September of '89, did you tell
21 the Oregon State Police what you saw regarding Frank Gable
22 on the night of January 17th, 1989?

23 A No, ma'am. I didn't.

24 Q And did you tell them about what Frank Gable
25 told you in July of '89 about killing Michael Francke?

1 A No, ma'am. I did not.

2 Q And why didn't you?

3 A Well, in the -- being in the institution, two
4 State Police coming in and talking to you about something
5 like that, you know, you just kind of clam up. You just
6 don't say anything. And I always go by the thing you don't
7 tell on nobody for nothing anyway. So, I just told them
8 what I felt they wanted to hear and let it go at that.

9 Q What is the -- have you ever heard the term
10 snitch?

11 A Yes, ma'am.

12 Q Have you heard the term code of the con?

13 A Yes, ma'am.

14 Q Can you tell the jury a little bit about what
15 the code of the con is?

16 A That's no matter the case, no matter who it is,
17 you don't tell on anybody for nothing.

18 Q And what is the attitude about inmates towards
19 other inmates that they consider to be snitches?

20 A It's a very hard attitude. They take a very
21 hard attitude towards anyone that they believe is a snitch.
22 There are times where they will stab them, beat them up,
23 they will make them kind of like an outsider in the
24 institution, go very hard on them.

25 Q Okay. Ultimately, on November 22nd, 1989, did

1 the State Police come back and interview you again about
2 your knowledge of Frank Gable and the Michael Francke
3 homicide?

4 A At that time they were taking me out of the
5 prison and over to the State Police office and talking to
6 me, yes.

7 Q On November 22, 1989, did they take you out of
8 the penitentiary and over to the patrol office?

9 A Yes, ma'am. They did.

10 Q Did they interview you on that date and time
11 about your knowledge of the Michael Francke homicide?

12 A Yes, ma'am.

13 Q On that particular date, November 22nd, 1989,
14 you tell the Oregon State Police basically what you have
15 told the jury here today about your knowledge of Frank Gable
16 and the night of January 17, 1989, and about the statement
17 that he made to you in July of 1989?

18 A Yes, ma'am. I did.

19 Q Mr. Childers, can you tell this jury what crimes
20 you have been convicted of?

21 A My crimes have been mostly Tampering with Drug
22 Records, writing prescriptions. I have a couple Possession
23 of Controlled Substance, and a UUMV, Unauthorized Use of a
24 Motor Vehicle.

25 Q Okay. Now, the Tampering with Drug Records

1 convictions, do you have like five or six of those?

2 A Yes, ma'am. I do.

3 Q And are those convictions that result from what
4 you have been describing to the jury as forging
5 prescriptions?

6 A Yes, ma'am.

7 Q Okay. And the UUV, is that basically like
8 stealing a car?

9 A Yes.

10 Q Is that what that means?

11 A Yes.

12 Q And the Possession of Controlled Substances,
13 that basically involved possessing illegal controlled
14 substances?

15 A Yes, ma'am.

16 Q When did you develop this drug problem you have,
17 Mr. Childers?

18 A My drug problem started in '71 when I came back
19 from Viet Nam.

20 Q And were you wounded over in Viet Nam?

21 A Yes, ma'am. I was.

22 Q Okay. And as a result of -- were you
23 hospitalized as a result of these wounds you received in
24 Viet Nam?

25 A Yes, ma'am. I was hospitalized in Viet Nam, in

1 Japan, and Letterman San Francisco and then Fort Ogden
2 General Hospital.

3 Q And did you receive some kind of pain killing
4 prescription drugs during the course of these
5 hospitalizations?

6 A Yes, ma'am. While I was hospitalized in Japan I
7 devoped a blood clot in my lung. To keep me calm, they were
8 giving me a new drug called Talwin which is a non-addictive
9 drug. It was a new drug, they said there was no way you
10 could get addicted to it, and they were giving me shots of
11 it every three hours and, subsequently, through my hospital
12 stays they kept giving me that drug and I became very
13 addicted to it.

14 Q Okay. And did you reach a point then when you
15 were released from the hospital and basically released back
16 into the community?

17 A Yes, ma'am.

18 Q And did you reach a point when doctor's weren't
19 giving you prescriptions anymore for these drugs?

20 A Yes, ma'am. I was -- when I first got out I had
21 two or three more surgeries in the VA hospitals and, at that
22 time, they were giving me large quantities of Talwin and
23 then they decided that it was addictive and that they
24 weren't going to give it no more, and I had such a habit
25 with it, I was forced to go out in the community and get

1 doctors to write it for me. And when they wouldn't write
2 it, I found it easier just to steal the prescription pads
3 and write it myself.

4 Q So basically when the system wouldn't give you
5 the drugs anymore, you took it in your own hands and
6 bypassed the system and got them for yourself?

7 A Yes, I did.

8 Q Mr. Childers, did the Oregon State Police or the
9 District Attorney's office give you anything basically for
10 your cooperation in the Michael Francke homicide
11 investigation?

12 A Not really. No, ma'am.

13 Q Okay.

14 A But I was released from prison, they gave me
15 subsidy to stay in a motel. They didn't want to put me in
16 the Monterey Apartments where I would be subjected to the
17 drug trade.

18 Q Let's stop and explain a little bit to the jury,
19 when an inmate gets out of a prison setting and they don't
20 have a place to go, they don't have a home to go to, does
21 the Corrections Division provide some kind of housing
22 initially for that inmate?

23 A Yes, ma'am. They do.

24 Q And what kind of housing? What kinds of houses
25 do they provide for the inmates?

1 A The only two places I know in this town are the
2 Monterey Apartments and the Haggerty House, I believe they
3 call it.

4 Q And what kind of people are the residents of the
5 Monterey Apartments and Haggerty House?

6 A Mostly drug users, drug abusers, people who sell
7 drugs. Anyone who gets out of prison and has no place to
8 go.

9 Q Okay. So ex-inmates, basically?

10 A Yes, ma'am.

11 Q Have you -- are you familiar with Monterey
12 Apartments and Haggerty House?

13 A Yes, ma'am.

14 Q Are there any drugs at those places?

15 A There is a lot of drugs at those places.

16 Q When you were first released from prison, was
17 there -- did the State Police and the District Attorney's
18 office have a concern about you being in that environment
19 after being released from prison?

20 A Yes, ma'am. They did.

21 Q And so did they, if fact, assist you in housing
22 you for part of the time for a while after you were released
23 from prison?

24 A Yes.

25 Q And what did that housing basically involve?

1 A My probation parole officer took me over -- and
2 State Police, over to a motel room at Oregon City. In, I
3 believe, Oregon Capital Inn, and I was housed there.

4 Q Okay. And did they provide money for food for
5 you as well?

6 A Yes, they did. They gave me a sustenance
7 allowance each day.

8 Q Okay. And at some point did that cease?

9 A Yes, ma'am. It did.

10 Q And then what occurred after that?

11 A I was placed in the Marion County Restitution
12 Center until I could find a place to reside.

13 Q And what is the Marion County Restitution
14 Center?

15 A That's where they send people that are --
16 instead of sending them to jail, they send them to the
17 Restitution Center where they can go out and work and get
18 money together to get their own place. It's just kind of a
19 step between jail and getting out or the other way around.

20 Q Okay. And when you got out of the Marion County
21 Restitution Center, then where did you go to live after
22 that?

23 A I found an apartment to rent over in south
24 Salem.

25 Q Okay. And did the Corrections Division assist

1 you in getting that apartment?

2 A Yes, they did. They paid the first month's rent
3 and the deposits.

4 Q Okay. Now, we got on to this by asking if the
5 State Police or the District Attorney's office had done
6 anything for you as a result of your cooperation. Anything
7 else that has been done for you other than this food and
8 lodging that you have just described to the jury?

9 A Well, I had -- while I was staying at the Oregon
10 Capital Inn I had an altercation with somebody who called me
11 a snitch and told me to keep my mouth shut and I ended up in
12 an altercation with him and hit him and my hand got all
13 infected. Due to the fact that I can't fight infections, I
14 had to go to the hospital and there was a pretty good sized
15 bill, and I guess that the District Attorney's office ended
16 up paying that.

17 Q Okay. And why do you have trouble fighting
18 infections?

19 A My exposure to Agent Orange in Viet Nam.

20 Q Okay. And then during the course of these
21 proceedings was there a time when you had a Parole Board
22 hearing?

23 A Yes, ma'am. I did.

24 Q And can you describe for the jury what -- what a
25 Parole Board hearing accomplishes, what happens at those

1 hearings?

2 A The Parole Board, there is either two or four
3 members present, and they decide if you should be given
4 parole or kept in prison. They go by different standards of
5 a matrix type system if you have done so much of your time
6 or they can set you anywhere between a certain time limit or
7 release you or keep you.

8 Q There is a range of months that you have to
9 serve?

10 A Yes, ma'am.

11 Q And the Parole Board decides where within that
12 range of months you're going to serve?

13 A Yes.

14 Q Do you remember, for you, what your range of
15 months were that you needed to serve?

16 A Six to ten months.

17 Q Okay. And do you recall where you -- how many
18 months you had served at the time you went to this Parole
19 Board hearing?

20 A Eleven months.

21 Q And did someone appear on your behalf at that
22 Parole Board hearing?

23 A Yes. My attorney Paul Ferder was there and,
24 also, you were. Sarah Moore was present.

25 Q Okay. And did I communicate something to the

1 Parole Board on your behalf at that hearing?

2 A Just to the fact that I had been questioned in
3 the investigation and that I was cooperating. And that was
4 all.

5 Q Okay. And where are you being housed right now,
6 Mr. Childers?

7 A Marion County Corrections Facility.

8 Q And what all are you basically serving time for
9 right now?

10 A I have a probation violation I'm serving a year
11 on, and a parole violation of six months, and, also, a six
12 month sentence from Lane County.

13 Q So basically you're kind of serving three
14 sentences at once?

15 A Yes, ma'am.

16 Q Okay. But for this trial going on, where would
17 you normally be housed right now?

18 A Parole violator's prison at Coos Bay.

19 Q Okay. And so is that also something that you
20 received, I guess, in exchange for your cooperation, is
21 you're being held here instead of down at the parole
22 violator's prison?

23 A Well, I don't know if I received anything. I
24 was put on a hold here so I would be available for the
25 trial.

1 Q Okay.

2 A So --

3 Q Anything else, Mr. Childers, that you feel that
4 you have received as a result of your cooperation in this
5 case?

6 A No. If anything, I think the sentences I got
7 were a little long.

8 Q Okay.

9 A Truthfully.

10 Q Okay. During the course of when you were on
11 parole and probation, did they have you on a specialized
12 parole and probation program?

13 A Yeah. They had me on what is -- they call the
14 intensive supervision where, generally, on parole you just
15 report once a month, make a report, you have to have
16 employment or whatever on intensive supervision. You have
17 contact once a week in the office, your parole officer comes
18 by your residence two or three times a week. You have to
19 give urinalysis at least once a week. And I was put on that
20 as -- as a condition.

21 Q Okay. Thank you, Mr. Childers.

22 I have nothing further at this time of this witness.

23 THE COURT: Are you going to be a little while,
24 Mr. Abel?

25 MR. ABEL: Yes. We'd like to take a break.

1 THE COURT: We'll take a recess before we get to
2 that.

3 THE WITNESS: May I go now?

4 THE COURT: Stay right there until the jury gets
5 by you.

6 THE WITNESS: Yes, sir.

7 (Jury out) 2:45

8 THE COURT: Now you may step down.

9 THE WITNESS: Thank you, sir.

10 THE COURT: 3:15. Ish.

11 MR. BOSTWICK: Ish?

12 THE COURT: Ish.

13 (Recess) 2:45 - 3:35

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1 THE DEPUTY: All rise.

2 THE COURT: Be seated, please.

3 Ms. Moore, I know I have seen her within the last
4 couple minutes.

5 MR. BOSTWICK: I thought she was with you.

6 THE CLERK: I thought she was with you.

7 THE COURT: Do you want me to wait for her
8 before I summon the jury?

9 MR. BOSTWICK: She was in the hallway, Your
10 Honor.

11 THE COURT: I guess she is doing the
12 questioning, we have to wait for her. It's Mr. Abel's turn.

13 MR. BOSTWICK: I have been here.

14 MS. MOORE: Go on up to the stand.

15 THE COURT: Why don't you come on back up and
16 resume the witness stand. And I'll remind you you're still
17 under oath.

18 THE WITNESS: Yes, sir.

19 THE COURT: Bring the jury in.

20 (Jury in) 3:35

21 THE COURT: I guess before I ask Mr. Abel, any
22 further questions?

23 MS. MOORE: Nothing further at this time of this
24 witness.

25 THE COURT: Mr. Abel?

CROSS EXAMINATION

BY MR. ABEL: Thank you, Your Honor.

Good afternoon, Mr. Childers. Is it Childers or Childers?

A Childers, sir.

Q Childers. That's right. I was interested in some of the information that you gave to us all about a little bit of the background of what prison life is all about. You told us some -- talked about some special terms and some other things, and I'm wondering, you have a rather extensive criminal history, which would indicate to me that you have spent -- and from what you told us earlier, that you have spent a good number of months behind bars either with the Oregon State Penitentiary or jail or some other place, is that true?

A Yes, sir.

Q Let's -- let's go back to the beginning of 1988. Is that when you first started serving time or was it before that?

A First time I served time was in 1984, '83.

Q 1984?

A In Nevada.

Q Was that in the penitentiary or a jail?

A Penitentiary.

1 Q What was the charge then?

2 A Obtaining controlled substance by fraud.

3 Q How much time did you actually serve behind
4 bars?

5 A Sixteen months, I believe.

6 Q And getting you out when, approximately?

7 A In July of 1984.

8 Q And then did you move to Oregon or what?

9 A Yes, I did. I moved here in '85.

10 Q When did you arrive in Oregon?

11 A 1985.

12 Q Do you remember the month?

13 A September, October, something like that I think.

14 Q And did you then immediately thereafter have
15 problems with the law?

16 A Not immediately. It was a little bit of time.

17 Q What was your next encounter with law
18 enforcement for criminal activity?

19 A 1986, I believe.

20 Q Were you imprisoned as a result of that?

21 A No. I was placed on probation the first time.

22 Q And was that a drug related charge?

23 A Yes, sir.

24 Q Okay. How long were you on probation?

25 A There has been a couple probations. Three

1 years, four years.

2 Q Were you able to successfully complete
3 probationary terms?

4 A Not since that time I have not, no.

5 Q From that point forward, say from 1988 and
6 through 1989, as a matter of fact to the present time, can
7 you give us an estimate of the total number of months you
8 have actually spent either in the Oregon State Penitentiary
9 or a County jail somewhere?

10 A About nineteen months.

11 Q And is it safe to say that life behind bars is,
12 to say the least, boring to some extent?

13 A Yes, sir, it is.

14 Q What -- what types of things do -- do inmates
15 do? Like, for instance, it would seem to me that if I was
16 incarcerated one of the things I would want to do is read
17 the newspapers regularly and find out what's going on in the
18 outside world. Is that a safe assumption?

19 A Yeah. If you have the paper sent to you.

20 Q Uh-huh?

21 A It has to be sent to you.

22 Q Do you have access to the various newspapers at
23 the Oregon State Penitentiary?

24 A If you can borrow somebody's newspaper, yeah.

25 Q And, in fact, you do that, is that right?

1 A I did occasionally.

2 Q There is newspapers in the library, too, isn't
3 there?

4 A I wouldn't know that.

5 Q Okay. It's safe to say, is it not, that just
6 because you are behind bars, you're not cut off from the
7 outside --

8 A No.

9 Q World? You have access to news media
10 information, there is T.V.s that you can watch under certain
11 conditions. That is true, isn't it?

12 A Yes, sir, it is.

13 Q Watch the news on evening news, morning news?

14 A Yes, sir.

15 Q Okay. Now, as I understand it -- and I'm
16 looking at the information that I received from the district
17 attorney's office, it appears to me that the first time you
18 were interviewed in connection with the Michael Francke
19 murder was on September 20th, 1989. Does that sound
20 correct?

21 A Yes, sir. It does.

22 Q And at that time do you remember which officers
23 interviewed you?

24 A No. I couldn't swear to which ones they were,
25 Fred or something.

1 Q A fellow named Terry Crawford ring a bell?

2 A Yes, sir.

3 Q And they asked you about your association or
4 relationship with Frank Gable and about your knowledge of
5 the Michael Francke murder, and you basically denied any
6 knowledge, is that true?

7 A Well, the questions they asked, yes, I did.

8 Q Uh-huh. Did you tell Mr. -- Detective Crawford
9 then -- and there was also a detective named Fredrickson
10 there, do you remember him?

11 A Yes.

12 Q Detectives Crawford and Fredrickson, did you
13 tell them that personally you classed Frank Gable as a light
14 weight, a person who was always attempting to impress people
15 with his machoism?

16 A Yes, sir.

17 Q And at this particular point in time you said
18 nothing about his involvement in the murder other than he
19 said he had been questioned and released?

20 A Yes, sir.

21 Q As a matter of fact, I believe you said Frank
22 Gable never told me that he killed Francke. Do you recall
23 saying that?

24 A Yes, I did.

25 Q At the time in September, you were at the Oregon

1 State Penitentiary, is that true?

2 A Yes, sir. I was.

3 Q And you talked to us quite a little bit about
4 snitches, code of the convict, snitch jackets. As a matter
5 of fact, I believe you told us that you got in a fight at
6 some point just recently because somebody called you a
7 snitch and you didn't like it, is that true?

8 A Yes, sir.

9 Q You also told us, I believe, that people that
10 are incarcerated in county jails, Oregon State
11 Penitentiary's and so forth hate snitches, is that true?

12 A Yes, sir.

13 Q Now, on November 22nd, 1989, you're still at the
14 Oregon State Penitentiary?

15 A Yes, sir.

16 Q Still hate snitches?

17 A Yes, sir.

18 Q You had some conversations with some officers
19 and, perhaps, with some representatives of the District
20 Attorney's office, you made some deals that -- through the
21 aid of Ms. Moore you told us all about. And as a result,
22 and following discussions -- you did have numerous
23 discussions with people about certain things in your life,
24 is that true? Things that could or could not be done for
25 you?

1 A No, sir.

2 Q Okay. Tell us how many conversations you had?

3 A The conversations I had were with the State
4 Police when they were investigating and asked me about it.
5 I did not have any conversations with Ms. Moore until my
6 parole hearing. I had never met the lady other than in
7 court.

8 Q Her involvement as far as you know is just that
9 she took the time to show up at the parole hearing and say
10 you were cooperating?

11 A It was her wishes at that time that I stay
12 incarcerated.

13 Q Were the -- were the conversations that you had
14 with Oregon State Police Officers, was that Detective
15 Crawford and Detective Fredrickson?

16 A No, sir. I just talked to those the first time.

17 Q Who were the folks you talked to about special
18 arrangements for you?

19 A Special arrangements?

20 Q Yes.

21 A I talked to -- actually, I talked to nobody
22 about special arrangements. They talked through my
23 attorney, Paul Ferder, and Paul Ferder related to me that
24 this is what they wanted to perhaps do.

25 Q And the end result was that on November 22nd you

1 gave them a statement about facts that you had already
2 testified to?

3 A I gave them a statement, yes.

4 Q Were you aware that on September 28th, 1989, and
5 September 29th, 1989, there were headline stories in the
6 Statesman Journal and the Oregonian proclaiming Frank Gable
7 to be a snitch?

8 A Yes. I remember that coming out.

9 Q Don't like snitches, do you?

10 A Not particularly, no.

11 Q What was the weather like on the 17th of
12 January, 1989, in the evening hours?

13 A I don't recall.

14 Q What were you like? You were pretty well blown
15 away, weren't you?

16 A No, I wasn't.

17 Q Been using a lot of drugs during that period of
18 time in November, December and January of '88 and '89?

19 A Yes.

20 Q As a matter of fact, after your -- your
21 interview on November 22nd, you had another interview on
22 December 13th, 1989. Do you recall telling the officers at
23 that time that you didn't even know whether or not you had
24 gone out and shoplifted on the 17th?

25 A That is true.

1 Q Did you tell them that if you had, it probably
2 would have been the Fred Meyer, south store?

3 A Or the Lancaster Mall.

4 Q But you didn't recall whether you did or did not
5 on the 17th?

6 A No, sir. I don't.

7 Q Okay. Now, you -- you said you went through
8 this course or this class at the Lancaster Mall and then you
9 walked down the street towards the State Hospital area, is
10 that right?

11 A Pardon me? I don't understand.

12 Q After you got through with your class or
13 whatever the thing is Welcomaaa I guess it is, that you
14 walked --

15 A Yes, sir.

16 Q And you walked back towards the Salem Hospital?

17 A Yes, sir.

18 Q It was dark that night?

19 A Yes.

20 Q Was it cold?

21 A I was wearing a jacket.

22 Q You don't recall whether it was raining?

23 A I don't really honestly recall.

24 Q Do you recall the lighting on D Street before
25 you approached 23rd Street? The -- were street lights

1 there?

2 A It's fairly dark along there, I believe.

3 Q Do you know for sure?

4 A No.

5 Q Not really?

6 A No.

7 Q Did you go into the building that you pointed
8 out where your wife works and make a phone call that
9 evening?

10 A No. You don't have to go in the building. The
11 phone is outside.

12 Q Did you make a phone call?

13 A No, I don't believe I did that night.

14 Q What did do you?

15 A I walked by there and walked on home.

16 Q You had to be home by eight for sure?

17 A Pretty close. Yes, sir.

18 Q You have testified that sometime between 6:30
19 and seven you were in that area, D Street, that you pointed
20 out to in exhibit number two, is that right?

21 A Yes, sir.

22 Q Can you get any closer to that time wise?

23 A No. I just know it was during that time.

24 Q And would you -- would you agree with me it
25 couldn't have been any later than between 6:30 and seven?

1 A No, I wouldn't believe it was.

2 Q Because you were home at eight. Were you home
3 before eight?

4 A I don't remember if I was home before eight or
5 not, but I generally got home before eight, yes.

6 Q So if you saw Frank Gable in his car on that
7 street, it had to be somewhere between 6:30 and seven?

8 A 6:30, 7:30, something like that.

9 Q Otherwise, you didn't see him that night?

10 A I don't believe I did, no.

11 Q In the past, prior to the 17th of January, '89,
12 had Mr. Gable ever given you a ride anywhere?

13 A Yes. I believe he had.

14 Q Matter of fact, you didn't drive? You didn't
15 have a license, did you?

16 A No, I didn't.

17 Q So you were pretty dependent on other people to
18 get you around, and he did drive you back and forth various
19 places, is that right?

20 A Yes. Later on we did that a lot.

21 Q And you're presently incarcerated, is that what
22 you told us --

23 A Yes, sir.

24 Q I believe. Did you tell us and I'm -- my memory
25 may have failed me, but, as far as any kind of arrangements

1 you made with the Oregon State Police through your attorney
2 Paul Ferder, was there anything like we won't press charges
3 that we -- that are pending or we'll not continue
4 investigation of charges that are pending against you?

5 A No, sir. There were not.

6 Q That is all I have at this time, Your Honor.

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REDIRECT EXAMINATION

BY MS. MOORE: Mr. Childers, at the time that you were -- after you had cooperated with the State Police in the Michael Francke homicide, and after you were out of prison and on probation and parole, did you have occasion to be prosecuted by the Marion County District Attorney's office for yet a new charge that you -- or a new crime that you had committed while you were on probation and parole?

A Yes. Just prior to being incarcerated this last time, I was.

Q In fact, did you come into court and plead guilty to that charge?

A Yes, I did.

Q And were you sentenced on that charge?

A Yeah. I was sentenced to probation and also to the Drop Program through the Corrections Division.

Q Tell the jury a little bit about what the Drop Program is through the Corrections Department?

A The Drop Program is set up by the Courts and Corrections that has treatment available for people that cannot afford to pay for it. You have to be in intensive supervision, you have to attend a meeting at Bridgeway once a week, and also go to an NA or AA meeting once a week. You also have urinalysis taken by both people, by probation

1 department and by Bridgeway. You have a contract you sign
2 that says the first time you violate the conditions you
3 spend five days in the Restitution Center. The second time
4 you spend fifteen days in prison -- in Marion County
5 Corrections Facility jail, the third time you serve thirty
6 days, fourth time you go back to prison. By the time I was
7 prosecuted for the next time, I was on step two. I had
8 already spent five days in the Restitution Center for
9 failing part of my contract.

10 Q All right. And right now, in fact, you are
11 incarcerated at the Marion County Corrections Facility
12 serving basically three different sentences, is that right?

13 A Yes, ma'am.

14 Q One of them is out of Lane County for six
15 months, is that right?

16 A Yes, ma'am.

17 Q One was a parole violation that the Parole Board
18 revoked you on, is that right?

19 A Yes, ma'am.

20 Q And isn't it true that one is a Marion County
21 probation violation that you are doing a year on?

22 A Yes, ma'am.

23 Q And isn't it true you got revoked on that since
24 you cooperated with the District Attorney's office on this
25 case?

1 A Yes.

2 Q And isn't it true that that wound you up in the
3 jail basically for another year?

4 A Yes.

5 Q Mr. Childers, would you describe yourself as a
6 snitch right now?

7 A No, ma'am.

8 Q And why not?

9 A There is certain cases in my estimation when --
10 when it comes time to tell the truth and to let go of it.
11 The reason I ended up talking, basically, a lot was through
12 my attorney and the fact that they weren't going to let this
13 go. I mean, this is a capital case. It's a murder case.
14 So, you know, they're going to hound you, they're going to
15 bug you, they're going to do everything and I just came
16 forward and talked about it, you know. I wear the label now
17 as a snitch. I have to fear for my safety wherever I'm at.
18 It's not going to be pleasant.

19 Q And that label will follow you right back to the
20 Marion County jail tonight when you go back there?

21 A Yes. I'm quite concerned about it.

22 Q Okay. When you were interviewed by the police
23 November 22nd of 1989 and you gave a statement, do you
24 recall that statement?

25 A Yes, ma'am.

1 Q Mr. Abel asked you a little earlier and you
2 speak so softly sometimes I miss a little bit about what you
3 say, but he was specifically asking you when you think it
4 was that you were walking down D Street on that particular
5 night that you saw Frank Gable coming out of the medical
6 center offices on January 17, 1989.

7 A Yes.

8 Q The statement you gave on November 22nd, 1989,
9 that was closer in time than today, is that a true and
10 accurate representation of what you recall happening --

11 A Yes.

12 Q In that statement?

13 A Yes, ma'am.

14 Q And in that statement you indicated that, "When
15 it was dark and I was walking west on D Street, I believe it
16 was 6:30 to 7:30 p.m., I was near the roadway walking
17 towards 23rd Street, a car pulled out of the medical office,
18 the car headed east on D Street. I recognized the car as
19 belonging to Frank Gable. The car was a gold Supra with
20 black louvers on the back window. I saw the car as it
21 pulled out of the parking area onto D Street. He was either
22 coming out of Medical Center Drive or the parking area. I
23 was approximately fifty feet east of 23rd Street when Gable
24 pulled out. I observed Gable driving the vehicle." Does
25 that sound consistent with what you told the police on

1 November 22nd, 1989?

2 A Yes, ma'am.

3 Q And is that an accurate recollection of your
4 memory on that date as to about the time of the evening that
5 you were walking down D Street and made these observations?

6 A Yes, ma'am, it is.

7 Q You also -- Mr. Abel talked to you a little bit
8 about the statement you made to the police on December 13th,
9 1989. And I think you had indicated that there were often
10 times that your wife would drop you at this NA and AA
11 program and you didn't stay there, is that right?

12 A Yes, ma'am.

13 Q I think you testified previously that you went
14 out and basically shoplifted or went about getting drugs or
15 whatever you needed to do business, basically, is that
16 correct?

17 A Yeah. That would be the time period that I
18 could go out and about. She was home all day until she went
19 to work at three, and she would drive me over and I was
20 expected more or less to be back around eight o'clock. So,
21 that was the time period I had to do whatever I had to do.

22 Q And doing whatever you had to do at this point
23 in your life included getting drugs?

24 A Yes.

25 Q And one of the ways, perhaps, that you got the

1 money or the property to obtain those drugs was through
2 shoplifting?

3 A Yes, ma'am.

4 Q And did you shoplift on numerous occasion?

5 A Very numerous.

6 Q And were there times you would go into stores
7 with the intention of shoplifting and not shoplift?

8 A Quite a few times, yes.

9 Q And why would that be?

10 A You would have a bad feeling. You would see
11 somebody watching you. You know, just -- after you have
12 done it for a while, you -- I guess you kind of get a feel
13 if somebody is on you or something, and then you just let it
14 go.

15 Q And basically you don't want to get caught and
16 don't want to get arrested?

17 A That is true.

18 Q So when the police talked to you on December 13,
19 1989, about whether you had, in fact, actually taken
20 something on the night of January 17th, 1989, when you were
21 out and about, could you remember on that particular
22 occasion whether you had actually lifted or shoplifted
23 something on that occasion?

24 A No, ma'am. I don't recall.

25 Q Isn't, in fact, that your statement on December

1 13, 1989, to Detectives Glover and Pecyna? It indicated,
2 quote, "I'm not sure if I lifted any items the night of the
3 17th of January, 1989. There are so many nights that I
4 boosted things, I can't remember what I might have boosted
5 or if I boosted anything on the night of January 17, 1989."
6 Is that an accurate statement?

7 A Yes, ma'am.

8 Q Mr. Childers, you went through for the jury the
9 crimes that you have been convicted of, are all of the
10 crimes you told the jury about that you have been convicted
11 of over your lifetime all drug related?

12 A In one way or another, yes.

13 Q Okay. And you previously talked with me a
14 little bit on direct and with Mr. Able on cross examination
15 about why you hadn't given the first time, two times you
16 were interviewed by the State Police in September, why you
17 hadn't indicated what you have testified here in court today
18 and what you told them eventually in November. And why was
19 that, that you didn't tell them everything in September?

20 A Well, the first time they interviewed me the two
21 detectives came into the prison, called me out to the intake
22 center where there is inmates running around, et cetera, and
23 it's a very, you know, bad setting. And I just didn't know
24 what was going on and just, you know, gave them the
25 statement that I gave them and let them be on their way.

1 Q Is it basically bad news for an inmate to be
2 seen talking to a cop in front of other inmates?

3 A Yes, sir.

4 Q And in the first setting were you in a situation
5 where you were in the view of other inmates?

6 A Yes, sir -- ma'am.

7 Q Does that tend to have repercussions for you in
8 the prison when you go back --

9 MR. ABEL: Your Honor, I object. These are
10 leading questions. She has gotten to the point where she is
11 almost testifying for this fellow.

12 MS. MOORE: I'm just following up on cross.

13 THE COURT: I sustain the objection to the
14 question as leading.

15 MS. MOORE: I'll withdraw it, Your Honor.

16 One final area, Mr. Childers. Do you remember the
17 first time you and I met?

18 THE WITNESS: Yes, ma'am.

19 MS. MOORE: I think you talked a little bit with
20 Mr. Abel about that situation. When is the first time you
21 and I ever met?

22 A Well, formally in my parole hearing.

23 Q Okay. And had I talked to you outside of that
24 Parole Board hearing prior to going into the parole hearing?

25 A Yes, ma'am. You had.

1 Q Who was present at the time that I met you for
2 the first time outside of the Parole Board hearing?

3 A Paul Ferder, my attorney, you, I think
4 Ms. Shannon Bright and myself.

5 Q Okay. Okay. And at that point in time, had we
6 ever discussed anything about cooperation or your
7 participation in this investigation?

8 A No, ma'am, we had not.

9 Q And at that point in time did I indicate to you
10 my position I was going to take with the Parole Board in
11 terms of you getting out of custody?

12 A You wanted me to stay in custody until after.

13 Q And, in fact, when we went into the Parole Board
14 hearing, did I ask them to let you out of custody at that
15 point in time?

16 A No, ma'am, you did not.

17 Q What did I tell the Parole Board when I went
18 into that hearing?

19 A That I had been cooperating and that I was
20 involved in the investigation. And that's about basically
21 it.

22 Q Okay. Was there a concern at that point in time
23 in terms of what would happen to you if you got out in the
24 community?

25 A Yes, ma'am. It was felt that I would go back

1 out and start using drugs again.

2 Q Was that a concern that the State Police and the
3 District Attorney's office --

4 MR. ABEL: Excuse me, Your Honor. I'm going to
5 object again. This is leading questions and --

6 MS. MOORE: I'll withdraw it, Your Honor.

7 The state has nothing further of this witness.

8 THE COURT: Any further questions Mr. Abel?

9 MR. ABEL: Yes Your, Honor. Thank you.

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RECROSS EXAMINATION

BY MR. ABEL: Mr. Childers, as I understand your scenerio with Ms. Moore, what happened is with your extensive background of criminality involving drug usage, and the fact that you had been incarcerated for I think you testified something like nineteen months and then been placed on probation, that you were then, again, charged with a crime and a parole violation and some other things, but you were put on probation, is that true? You weren't incarcerated, you were on probation?

A The nineteen months I mentioned is including the four and a half months I have done this time. Prior to that it was only, what, fourteen or fifteen. The reason I was given the probation was to put me on that Drop Program. It was felt that through the counseling and through the constant being with parole and what have you that it would be better for me.

Q And is this the same time frame as when you were receiving money so you could buy groceries and you were attending all of these classes and so forth?

A No, sir. At this time I was out working. I had my own apartment. The only contact I had was with my parole officer who I saw once a week, and he came by my job. So, I was receiving no money from them at all during this time.

1 Q Okay. What time frame are we talking about
2 then?

3 A We're talking about this -- when you say I was
4 put on probation this last time.

5 Q What -- give us a date, if you can?

6 A It was November or December. And the only
7 reason that --

8 Q December, wasn't it?

9 A November or December. I'm not -- and the reason
10 I was given the probation is my parole officer, because I
11 had been seven months of continually being clean and had
12 gotten off the intensive supervision, thought that the Drop
13 Program would be better than going back to prison.

14 Q That is all I have. Thank you.
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REDIRECT EXAMINATION

BY MS. MOORE: Mr. Childers, just one more question. This last time that you were convicted of a crime, do you remember what the crime was you were convicted of?

A Tampering with Drug Records and Resisting Arrest.

Q Okay. Was that the PV?

A No, ma'am. I was given under the new sentencing guidelines probation and custody units on it.

Q Okay.

A The PV was the one your counting controlled substance or possession sometime I had in '87.

Q Okay. Those are ones that actually you got a sentencing guidelines -- what they call a sentencing guideline sentence on, is that correct?

A Those two were. Yes, ma'am.

Q And, technically, those, you were put on probation for?

A Yes, ma'am.

Q Under sentencing guidelines, was that the required sentence, a probationary sentence?

A Yes, ma'am.

Q So, does sentencing guidelines basically tell a

1 Judge who they can send to prison and who they cannot?

2 A I believe in certain instances, yes.

3 Q So the mandated sentence or the required
4 sentence for you that last time around on those charges was,
5 in fact, probationary sentences?

6 A Yes, ma'am. And county jail time.

7 Q Right. Thank you, Mr. Childers.

8 I have nothing further.

9 MR. ABEL: Nothing further, Your Honor.

10 THE COURT: You may step down. Thank you.

11 THE WITNESS: Thank you.

12 MS. MOORE: May this witness be excused, Your
13 Honor.

14 THE COURT: May he be excused, Mr. Abel?

15 MR. ABEL: Your Honor, I -- yes. He can be
16 excused.

17 THE COURT: All right.

18 MR. ABEL: He is out there with a subpoena.

19 MS. MOORE: State calls Duane Gamble.

20 THE COURT: Come on up here, please, Mr. Gamble.
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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I directed the Appellant's Excerpts of Record Volumes I, II, III, IV, V, VI, & VII to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman

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No. 19-35427

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK E. GABLE,

Petitioner-Appellee,

v.

MAX WILLIAMS,

Respondent-Appellant.

APPELLANT'S EXCERPTS OF RECORD VOLUME IV

Appeal from the United States District Court
for the District of Oregon

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APPELLANT'S EXCERPTS OF RECORD VOLUME IV

Pursuant to Circuit Rule 30-1.7, appellant submits the following Appellant's Excerpts of Record, as indexed below.

INDEX

<u>Clerk's Docket #</u>	<u>Document</u>	<u>E.R. #</u>
56-2 through 58-1	Further transcript excerpts from state criminal proceedings	542

CAPPIE CLIFFORD HARDEN

called as a witness on behalf of the plaintiff, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please.

THE CLERK: Would you state your full name, and
spell your last name?

THE WITNESS: Cappie Clifford Harden,
H-A-R-D-E-N.

DIRECT EXAMINATION

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BY MR. BOSTWICK: How old are you, Mr. Harden?

A Thirty-four.

Q Are you also known as Shorty Harden?

A Yes, I am on the streets.

Q And in what city are you residing at this time,
sir?

A I'm living in the Portland area.

Q Are you employed at this time?

A Yes, I am.

Q How are you employed?

A I work for a construction outfit up there
running heavy equipment.

Q Okay. Did you used to live in the Salem area?

A Yes, I did.

Q How long have you lived in and around the Salem
area, Mr. Harden?

A About half my life.

Q Okay. Where did you grow up?

A Phoenix, Arizona.

Q Did you graduate from high school?

A No. I dropped out.

Q Did you join the military service at that time?

A Yes, I did. The Marine Corps.

1 Q Did you receive a general discharge from the
2 Marine Corps?

3 A Yes, I did.

4 Q What kind of jobs have you held since high
5 school?

6 A Construction.

7 Q Construction jobs?

8 A Yes.

9 Q Have you been back and forth between Arizona and
10 the Salem area since your discharge from the Marine Corps?

11 A Yes, I have.

12 Q And when was that discharge?

13 A I'm not sure exactly the year. It was the late
14 seventies.

15 Q Okay. Did you come back to the Salem area in
16 the fall of 1988?

17 A Yes, I did.

18 Q Did you start work at that time?

19 A No. Not at that time.

20 Q How did you support yourself?

21 A I was buying and selling cars.

22 Q Doing anything else?

23 A I was selling drugs.

24 Q What kind of drugs were you selling?

25 A Methamphetamine.

1 Q Where were you living in the fall of 1988 and
2 the winter of 1989?

3 A On Center Street.

4 Q Okay. Who were you living with at that time?

5 A I was staying in the basement of an apartment
6 complex my mother was managing.

7 Q Okay. I would like the witness shown what has
8 been marked as state's exhibit numbers 336, 337 and 338.

9 I would like to you take a look at those photographs,
10 Mr. Harden, and ask you if you recognize what is depicted in
11 those photographs?

12 A Yes. That is the house I lived in, the
13 apartment building.

14 Q Okay. Were you living in there in January,
15 1989?

16 A Yes, I was.

17 Q And I would like those photographs shown to the
18 defense and I would move that they be admitted into evidence
19 at this time.

20 MR. ABEL: No objection.

21 THE COURT: Be admitted.

22 MR. BOSTWICK: Mr. Harden, do you know the
23 defendant, Frank Gable?

24 THE WITNESS: I have met him.

25 MR. BOSTWICK: Do you recall about when you met

1 Mr. Gable in relationship to when you moved back to the
2 Salem area in the fall of 1988?

3 A It was I think in December, I think it was. I
4 met him over at a house over on Hyacinth Street. He gave me
5 a ride to a friend of mine's house that night.

6 Q Okay. He gave you a ride to a friend of yours?

7 A Yes, he did.

8 Q Okay. Do you recall what kind of vehicle he was

9 --

10 A It was a -- a hatch back Toyota, I think.

11 Q Was he an associate of yours at that time?

12 A No, he was not.

13 Q Did you ever -- how many times did you see
14 Mr. Gable at this house on Hyacinth Street?

15 A I only seen him there a couple of times.

16 Q And where was that located on Hyacinth Street?

17 A On Hyacinth and by Portland Road there.

18 Q Okay. Do you know who lived there in the fall
19 of 1988, early 1989?

20 A Johnny Bender, his old lady, Frank.

21 Q Frank Gable?

22 A No. Frank Harman, also known as Sam.

23 Q Okay. Okay.

24 A Janet, her boyfriend.

25 Q Okay. I would like the witness shown what has

1 been marked as state's exhibit numbers 319, 320, 323 and
2 324.

3 Take a look at those photographs, Mr. Harden, and I'll
4 ask you are they -- do you recognize the area?

5 A Yes. These two are of the house and this is an
6 area across the street from the house.

7 Q Are they a true and accurate visual
8 representation of the house and the area right across the
9 street?

10 A Yes, they are.

11 Q Okay. I would like those shown to the defense
12 and move that they be admitted into evidence.

13 MR. ABEL: No objection.

14 THE COURT: Be admitted.

15 MR. BOSTWICK: Do you recall the time in the
16 middle of January, 1989, when you saw the defendant at the
17 Hyacinth Street house in his vehicle?

18 THE WITNESS: Yeah, I do recall an incident. He
19 wasn't at the house, he was across the street from the house
20 in his car.

21 MR. BOSTWICK: Okay. I would like the witness
22 shown what has now been admitted as state's exhibits number
23 323 and 324. They are the ones I just gave you, I believe.
24 I'm sorry.

25 THE CLERK: That's okay.

1 MR. BOSTWICK: Would you tell us, Mr. Harden,
2 which photographs gives the location as to where Mr. Gable
3 --

4 THE WITNESS: This photograph right here.

5 MR. BOSTWICK: Look on the back.

6 A Number 324.

7 Q Okay. I would like that photograph shown to the
8 jury at this time. I guess -- I think I want all
9 photographs, excuse me, 319, 320, 323 and 324, please.

10 Mr. Harden, you indicated that 324 is the area where
11 he was parked when you saw him?

12 A Yes.

13 Q Is that area immediately across the street?

14 A Yes. It's right across the street from the
15 driveway of the Hyacinth house.

16 Q Okay.

17 Q Mr. Harden, do you recall about what time of day
18 it was?

19 A Late afternoon.

20 Q Was -- do you recall what kind of car Mr. Gable
21 was driving?

22 A It was the same car that he gave me a ride in
23 earlier in the year, earlier in December.

24 Q And why were you there?

25 A I was dropping off Jodie.

1 Q Dropping off Jodie?

2 A Yes.

3 Q Who is Jodie?

4 A This girl I know.

5 Q Why were you dropping her off there?

6 A Because I was tired of her being at my house.

7 Q Pardon me?

8 A Because I was tired of her being at my house.

9 Q Okay. How long did you stay?

10 A I was only there about ten or fifteen minutes.

11 I didn't get out of my car. I stayed in my car.

12 Q What kind of car were you driving, sir?

13 A My '70 Mustang.

14 Q I would like the witness shown what has been
15 marked as state's exhibit 301, 304 and 305.

16 Take a look at those photographs and I'll ask you if
17 you recognize what those photographs depict or show?

18 A Yeah. That's what is left of my car.

19 Q Is that the car that you were driving in
20 January, 1988?

21 A Yes, it is.

22 Q Shows the outside and shows also the inside?

23 A Yes.

24 Q Did you have a problem with your ignition at
25 that time, sir?

1 A Yeah. You can see the wires hanging in this
2 picture number 305, I guess. It's where my solenoid on the
3 outside didn't work by the ignition switch. I had to twist
4 wires and touch wires in order to get it started.

5 Q You had to hot wire your car to get it started?

6 A Yes.

7 Q Is that the condition that it was in, in
8 January, 1989?

9 A That was the condition it was in up until the
10 time I got rid of it.

11 Q That's the car you were driving in January of
12 1989?

13 A Yes.

14 Q Okay. Do you recall when you got rid of the
15 car?

16 A When?

17 Q Yeah?

18 A I think it was in February or March I traded it
19 for a Harley.

20 Q Okay. I would like those photographs shown to
21 the defense and move that they be admitted into evidence at
22 this time.

23 MR. ABEL: No objection.

24 THE COURT: Be admitted.

25 MR. BOSTWICK: When you observed Mr. Gable, was

1 he alone or with someone else?

2 THE WITNESS: He was alone.

3 MR. BOSTWICK: Did you see him inside or outside
4 the vehicle?

5 A I seen him get out, walk to the back of the car,
6 get to -- get around to the back of it and get back in the
7 car.

8 Q Do you recall how he was dressed?

9 A Dark sweats.

10 Q Did you see anything, notice anything else about
11 him?

12 A He had a knife in his waistband of his sweats.

13 Q Okay. How long did you stay there.

14 A Like, I'd say fifteen minutes, tops.

15 Q Did you have any conversation with Mr. Gable at
16 that time?

17 A No, I did not. I didn't talk to him any time.

18 Q Okay. Was Mr. Gable there when you left?

19 A Yes. His car was still there.

20 Q Where did you go?

21 A Went on about my business.

22 Q And what was your business?

23 A Selling drugs.

24 Q Did you see Mr. Gable later that same night?

25 A Yes, I did.

1 Q Where?

2 A At the Dome Building.

3 Q How did you happen to be at the Dome Building?

4 A I got called from Jodie Swearingen to pick her
5 up at the hospital grounds. And she called me twice to pick
6 her up. I didn't show up the first time, and I went down
7 there to pick her up.

8 Q Do you recall about what time that was?

9 A Six-thirty, seven o'clock. It was after dinner.

10 Q Where were you when you received the phone call?

11 A I was at home.

12 Q The place on Center Street?

13 A Yes.

14 Q Do you recall how you got to the Dome Building?

15 A I drove my Mustang. My '70 Mustang.

16 Q Do you recall how you got there from the Center
17 Street residence?

18 A I just went -- the route I took?

19 Q Right?

20 A I just drove straight up Center Street.
21 Straight shot from where I lived then.

22 Q How would you know where to go?

23 A I didn't. I just happened to pull in and park.
24 Figured if Jodie seen my car she would get a ride, and if
25 she didn't, I would leave.

1 Q Do you recall where you parked?

2 A In the parking lot by the Dome Building, I guess
3 it is now. I didn't know what it was called at the time.

4 Q Okay. Maybe if we could -- could the witness
5 step down from the witness chair. I'm going to ask him to
6 refer to what has been marked, previously admitted, state's
7 exhibit number three. Do you have the pointer? Mr. Harden,
8 if you would step over here so the jury can hear, see you,
9 excuse me, and use the pointer to point out how you entered
10 the Dome Building?

11 A I came up Center Street here, turned left,
12 pulled in right in here and I parked right about where that
13 car is.

14 MR. ABEL: Would you point, again, where your
15 car is?

16 THE WITNESS: Right here.

17 MR. ABEL: Thank you.

18 MR. BOSTWICK: Okay. You can retake the witness
19 chair.

20 What did you do after you pulled in and parked?

21 THE WITNESS: I just parked and waited. I
22 wasn't there but a couple minutes until she approached.

23 MR. BOSTWICK: How did Jodie approach?

24 A She came up from behind me, kind of startled me
25 and got in the car.

1 Q Did you have a conversation with Jodie at that
2 time?

3 A I kind of bitched her out for bugging me to come
4 and pick her up at that time of night when I was busy doing
5 things.

6 Q Why did you go get her?

7 A I've helped Jodie out quite a bit through the
8 years, you know, the last year or so when we knew each
9 other. If she needed money, I would give her money, help
10 her out. Whenever I could. She is a young kid.

11 Q Did you give her dope, too?

12 A No. I wouldn't give her dope. Mostly when she
13 wanted money it was for groceries. I gave her food stamps
14 that I acquired through my dope deals, but I didn't give her
15 dope or money so she could go out and buy dope.

16 Q So what happened after Jodie got in the car?

17 A That's when I seen the dome light of the car
18 come on.

19 Q Okay. What car?

20 A The car that was across from me.

21 Q Okay. Could you reapproach the diagram? Could
22 you use the pointer and point out this other car, where it
23 was in relationship to your car, sir?

24 A Right about here.

25 Q Okay. You can retake the witness chair. I

1 would like the witness shown what has been marked as state's
2 exhibit number 477. Do you recognize --

3 A That's the car.

4 Q Is that the car you saw on the night?

5 A Yes, it is.

6 Q I would like that shown to the defense and move
7 that it be admitted into evidence.

8 MR. STORKEL: Your Honor, I would like to ask a
9 question in aid of objection.

10 THE COURT: Please do.

11 MR. STORKEL: Mr. Harden, have you previously
12 been shown this photo?

13 THE WITNESS: I have seen it once.

14 MR. STORKEL: Okay. And at the time you saw the
15 photograph, prior to seeing it, had you described what the
16 vehicle looked like?

17 A Yes.

18 Q Okay. And you're saying that you had only seen
19 this car one time, is that correct?

20 A Yes.

21 Q And then when you looked at this photograph
22 you're saying that you recognized it as soon as you saw the
23 photo, is that correct?

24 A Yeah. Like I say, I buy and sell cars. I know
25 what cars look like.

1 Q Is this the location that you're saying that the
2 car was in on the night of January 17th?

3 A I'm not saying that at all.

4 Q Your Honor, we have no objection to it being
5 admitted just simply for the purpose of showing what Michael
6 Francke's car looked like.

7 THE COURT: It will be admitted. He has
8 testified that -- that is what he has testified to. It will
9 be admitted.

10 MR. BOSTWICK: I would like that shown to the
11 jury, Your Honor.

12 Mr. Harden, is that the car you saw on the night at
13 the Dome Building?

14 THE WITNESS: Yes, it is.

15 MR. BOSTWICK: You saw it parked in the location
16 that you have already testified to?

17 A Yes, sir.

18 Q Okay. Mr. Harden, what did you notice? What
19 did you see?

20 A I seen the dome light of the car come on so I
21 didn't leave right away, and I seen Frank get into the car.

22 Q Why didn't you leave right away?

23 A Stick around and see what Frank was up to.

24 Q You saw the defendant get in that car?

25 A Yes, I did.

1 Q How did you know it was the defendant?

2 A Because I recognized his face.

3 Q How many times had you seen him prior to this
4 particular night?

5 A Only a couple.

6 Q Why did you recognize his face?

7 A Because I made it a habit to remember the face
8 of people that I thought were rats or informants.

9 Q Did you see how he got into the car?

10 A No, I did not.

11 Q Okay. Was anybody with him?

12 A No. I did not see anybody else with him.

13 Q Did you see him doing anything inside the car?

14 A No. I couldn't see him once he got into the
15 car. He closed the door and the dome light went off.

16 Q Okay. What happened after that?

17 A That's when I seen the other gentleman
18 approaching the car.

19 Q What did this other gentleman look like?

20 A Looked like a businessman.

21 Q Where did this other gentleman come from?

22 A One of the buildings right there by the parking
23 lot.

24 Q Okay. Where was he in relationship to the car
25 when you first saw him, sir?

1 A He was approaching it on the driveway.

2 Q Okay. What did this person do?

3 A He walked up to the car then and that's when I
4 heard him yell, you know, "Get out." "Hey, what are you
5 doing in my car." And he started running towards the car.

6 Q And then what did he do?

7 A That's when I seen Frank come out of the car and
8 stab the man one time in the chest. And that's all I seen.

9 Q That's all you saw?

10 A That's all I seen. I was busy starting my car
11 and getting out of there.

12 Q Busy starting your car and getting out of there.
13 What do you mean by that?

14 A I had to twist the wires together and jump it.

15 Q Okay. Did you have to bend over?

16 A You had to squat down to the right. It was on
17 the console in between the seats, I had to find the wires
18 and then twist them.

19 Q What did Mr. Gable do after he stabbed this man?

20 A I didn't see anything after that. I was busy,
21 worried about myself.

22 Q Did you see where Mr. Gable went?

23 A No, I did not.

24 Q Did you see where this businessman went?

25 A No, I did not.

1 Q Where did you go?

2 A I went home.

3 Q What happened to Jodie? Was she with you at
4 that time?

5 A Yes, she was.

6 Q Did you take Jodie home with you?

7 A Yeah, at that time I did take her to the house.
8 Told her to shut up and forget what she ever seen.

9 Q Why did you tell her that?

10 A I didn't want to be involved.

11 Q Did you hear any car alarm go off?

12 A No, I did not.

13 Q How come you didn't call the police?

14 A I don't call the police.

15 Q Why not?

16 A I'm not a rat.

17 Q Okay. When do you recall hearing about the
18 homicide of Mr. Francke?

19 A A few days later.

20 Q Why didn't you report it to the police after you
21 heard about it, what you saw?

22 A Like I said, I'm not a rat.

23 Q Do you recall being contacted by the police in
24 November of 1989?

25 A Yes, I do.

1 Q And asked if you knew anything about it?

2 A Yes, I do.

3 Q The homicide of Mr. Francke?

4 A Yes.

5 Q What did you tell them?

6 A I told them I didn't know what they was talking
7 about.

8 Q Why didn't you tell them anything in November of
9 1989?

10 A I'm not a rat.

11 Q You were contacted again in January of 1990.
12 Did you tell them what you knew in January?

13 A Not the first couple times they talked to me.

14 Q Why were you reluctant to talk to them?

15 A As I said, I'm not a rat.

16 Q Did you eventually tell them what you saw?

17 A Yes, I did.

18 Q Why did you eventually tell them what you saw
19 when you originally told them you didn't know anything about
20 it?

21 A Because they proved to me with evidence that
22 they knew I was lying.

23 Q Did they threaten you in any way?

24 A No. They did not.

25 Q Did they promise you anything?

1 A No, they did not.

2 Q District Attorney's office threaten you in any
3 way?

4 A No, he has not.

5 Q District Attorney's office promised you
6 anything?

7 A No.

8 Q You have been convicted on more than one
9 occasion of possessing drugs, is that correct, Mr. Harden?

10 A Yes.

11 Q How many times have you been convicted of
12 possessing drugs?

13 A Three.

14 Q June of '89?

15 A Yes.

16 Q March of '90?

17 A Yes.

18 Q February, '91?

19 A Yes.

20 Q Also convicted of Failure to Appear which means
21 you failed to show up for court?

22 A Yes. End of February, the later one of
23 February, '91.

24 Q Also been convicted of Assault back in -- back
25 in the seventies, 1976?

1 A Yes.

2 Q Placed on probation by Judge Norblad on the
3 recent convictions?

4 A Yes, I did.

5 Q Okay. A couple charges were dismissed, is that
6 correct?

7 A They -- they dismissed an Exconvict in
8 Possession of a Firearm and a Delivery charge because they
9 were weak, if I pled guilty to the Failure to Appear and the
10 Possession.

11 Q Okay. Judge Norblad allow you to go into a drug
12 treatment program prior to sentencing?

13 A Yes, he did. I successfully entered and
14 completed a six month inpatient drug treatment program up in
15 Portland.

16 Q Okay. And when was that?

17 A July of '90 until just recently here.

18 Q February?

19 A February or March.

20 Q Okay. Did you complete that program and show
21 proof of that to Judge Norblad before he sentenced you?

22 A Yes, I did.

23 Q Are you on probation to Judge Norblad right now?

24 A Yes, I am. I'm on what they call ISP, which is
25 intense supervised probation, where I go in and give two

1 urinalysis a month.

2 Q What happens if you get caught with a bad
3 urinalysis?

4 A I'm in what they call the Drop program where
5 your first dirty UA gives you five days in the Restitution
6 Center, your second dirty UA you do fifteen days in jail,
7 the third dirty UA you do thirty days in jail, and the
8 fourth one you go back in front of the Judge.

9 Q What is a dirty UA?

10 A Proof of using methamphetamine, any other kind
11 of drugs, pot, anything.

12 Q They caught you once, didn't they?

13 A Yes.

14 Q What happened?

15 A Five days Restitution Center.

16 Q What happens next time?

17 A Fifteen days in jail.

18 Q State Police give you any money?

19 A For what?

20 Q Did they give you any money?

21 A No.

22 Q District Attorney's office give you any money?

23 A No.

24 Q Give you any deals here to testify?

25 A No, they have not.

1 Q Have you been represented by an attorney?

2 A Yes. I have my own private counsel.

3 Q What is his name?

4 A John W. Jensen.

5 Q Did you offer to tell the press what you seen,
6 what you saw at the Dome Building for money?

7 A They offered to bail me out one time if I told
8 them.

9 Q How did they go about doing that?

10 A I was in county jail. I was in the hole. I got
11 a kite to call this number.

12 Q What is a kite, Mr. Harden?

13 A It's a flyer sent in by somebody from the
14 outside.

15 Q Okay. And what did he -- did they tell you?

16 A To call this number.

17 Q Did you call the number?

18 A Yeah.

19 Q Who did you talk to?

20 A Some guy named Steve Jackass -- Jackson or
21 something like that.

22 Q What did he want?

23 A Wanted to know what I seen.

24 Q Was he going to bail you out?

25 A He offered to. He said he would talk to his,

1 quote unquote, "his boss."

2 Q Okay. Did they bail you out?

3 A No.

4 Q Okay. Thank you, Mr. Harden.

5 That is all I have.

6 MR. STORKEL: Your Honor, this might be an
7 appropriate time for a break. I think there will be
8 extensive cross examination of Mr. Harden.

9 THE COURT: What is extensive?

10 MR. STORKEL: More than thirty minutes.

11 MS. MOORE: Let's get started.

12 THE COURT: We didn't start until like -- go
13 ahead.

14 MR. STORKEL: Okay.

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CROSS EXAMINATION

BY MR. STORTEL: Good afternoon, Mr. Harden.

A Good afternoon.

Q The first time you talked to the police was on November 20th, 1989, is that correct?

A If that's what it says.

Q That's what the report says. And you actually made some statements to the police on that date, isn't that correct?

A If that's what it says.

Q Okay. And I'll be referring to that report which puts down what you said.

First off, before you were able to identify Frank Gable the police showed you a photograph of him, isn't that correct?

A No.

Q The report states that you needed to see a photograph of Frank Gable before you could be sure that you knew Frank Gable or not?

A No. I don't recall that.

Q Okay. So you're saying that the police officer that wrote the report is wrong about that, is that correct?

A I don't recall even seeing a picture of Frank while I was there.

1 Q And then if the police officer is saying that he
2 showed you a picture then he is incorrect, is that correct?

3 A That's right.

4 Q Now, also at that time, the report states that
5 you stated that Frank had given you a ride home from the
6 Bender's at one time in a maroon colored Toyota, is that
7 correct?

8 A I guess, yeah. If that's what it says.

9 Q That's what it says. What color do you consider
10 to be maroon?

11 A A reddish color.

12 Q Okay. Now, this report also states that what
13 you remembered when you were talking to the police on
14 November 20th, 1989, that the first time that you met Frank
15 Gable was after January 20th, 1989, after the dope raid on
16 the house by the Salem PD. Do you recall making that
17 statement?

18 A If it's in the report.

19 Q It's in the report. So, at that time, then, you
20 had been telling the police that that would be the first
21 time you met Frank Gable, is that correct?

22 A If that's what it says.

23 Q That's exactly what it says. And at that time
24 you were trying to be accurate and truthful, at least about
25 when you met Frank Gable, is that correct?

1 A No, it's not.

2 Q Okay. Were you deliberately lying to the
3 police?

4 A Yes. Yes, I was.

5 Q Now, at that time, the second time that you said
6 that you met Frank Gable was a few months prior to your
7 November interview, isn't that correct?

8 A Excuse me, would you reword that?

9 Q Okay. During the November 20th, 1989, interview
10 with the police, you told them that the second time that you
11 had ever seen Frank Gable was just a few months before that
12 interview which took place on November 20th. So, if we go
13 back a couple months that would be October, September?

14 A If that's what it says.

15 Q That's exactly what it says. So then that is
16 what you told the police, is that correct?

17 A If that's what is wrote down there.

18 Q Okay. And you said that the time -- that second
19 time that you saw Frank Gable that you remembered that you
20 saw him getting a beer out of the refrigerator. So, is that
21 correct if that's what the report says?

22 A If that's what it says.

23 Q Okay. Now, also, in this report you stated that
24 you had known Jodie Swearingen for about a year and that you
25 had laid her a couple of times, is that correct?

1 A Yes.

2 Q If that's what is wrote down there.

3 Q And that doesn't surprise you that that's in the
4 report, does it?

5 A No.

6 Q Okay. And you were aware that Ms. Swearingen
7 was under the age of eighteen, weren't you?

8 A I'm not really aware of the fact if she was or
9 not.

10 Q You thought that she was a young girl though,
11 didn't you?

12 A No. She didn't look like a young girl.

13 Q And so it would be your statement that you
14 didn't know whether she was eighteen or not, is that
15 correct?

16 A That's right.

17 Q Now, in that statement you also stated that in
18 January sometime, Jodie Swearingen called you at your mom's
19 house and wanted you to drive her from her dad's house in
20 Dundee to Salem?

21 A If that's what is wrote down there.

22 Q That's exactly what is written down there,
23 Mr. Harden. And next you told the police that you told
24 Jodie that she must have "hit her head," and that's a quote,
25 if she really thought you were going to go to Dundee to get

1 her?

2 A I think the phrase I used was you must have
3 bumped your head.

4 Q Well, the report says in quotes "hit her head."
5 Okay. So, according to that report, you had no intention of
6 picking up Jodie Swearingen in Dundee, is that correct?

7 A No. Not in Dundee, no.

8 Q Did you figure that would be just too much for
9 Jodie to be asking? Is that correct?

10 A No. I think if you recall I think I sent one of
11 my associates in one of my cars to pick her up. I can't
12 recall, you might read further down there it might say that,
13 I don't know.

14 Q This is the November 20th report and what you
15 said is that you told her that she must have hit her head if
16 she thought you were going to come to Dundee to get her.

17 Now, in that report you said that sometime about dusk
18 that Jodie Swearingen showed up at your mom's house, is that
19 correct?

20 A If that's what is wrote down there.

21 Q Okay. That's what is written in the report.

22 Now, you stated that you then gave Ms. Swearingen a
23 ride to West Salem after she called her boyfriend, Ron, and
24 dropped Jodie Swearingen off at the Safeway Store. So, if
25 that's what is in the report, that is exactly what you told

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1 Q Where did you have those knives back in November
2 of 1989 when you were giving this interview?

3 A Oh, I had part of them on my wall on display.

4 Q Okay. And where were the rest of them?

5 A In a -- in ammo boxes.

6 Q And what kind of different knives did you have?
7 Why don't you just describe a couple different ones?

8 A Chef's knives, pocket knives, throwing knives,
9 bayonets, swords.

10 Q And did you make a regular habit of trading
11 these knives with other people?

12 A Not trading the knives, no.

13 Q What what did you do with the knives?

14 A Collected them.

15 Q You always kept them?

16 A I kept them.

17 Q Now, in November 20th, you told the police that
18 you suspected that John Bender and Pat Boggs may have stolen
19 some knives from you, is that correct?

20 A That's a fact. Pat Boggs did.

21 Q So you -- you were able to verify later on that
22 Pat Boggs had stolen some knives from you, is that correct?

23 A Yeah. He was with him. I didn't know, but I
24 did verify Pat did.

25 Q Okay. And you recall that you told the police

1 also that Pat Boggs had stolen some other goods from you, is
2 that correct?

3 A That's right.

4 Q What are some of the other things he stole from
5 you?

6 A A color T.V., a stereo, a lot of miscellaneous
7 things. When you have so much stuff, you don't know exactly
8 what all was taken.

9 Q So you had a lot of stuff at your apartment, is
10 that correct?

11 A Well, yeah.

12 Q A lot of relatively valuable stuff, right?

13 A Well, yeah.

14 Q And you got a lot of that from basically your
15 drug dealing, is that correct?

16 A Well, yeah.

17 Q Okay. Because a lot of times you would trade
18 people drugs for that stuff?

19 A A lot of times I would, yeah.

20 Q So sometimes the deal that you would make is
21 they would give you stuff for the drugs instead of money?

22 A Sure.

23 Q And in the November 20th report, you stated that
24 you don't trade or sell your knives, and you hadn't ever
25 sold a knife or purchased a knife from Frank Gable to the

1 best of your knowledge?

2 A That's right. I was also lying to the police at
3 that time, too.

4 Q Okay. And you didn't have any problem lying to
5 the police, did you? You thought that was to your benefit,
6 didn't you?

7 A At that time, it was.

8 Q Okay. And this first interview with the police
9 is November 20, 1989, if that's what the report says?

10 A Yes.

11 Q Now, the next time that you talked to the police
12 was on the afternoon of January 18th, 1990. And that's what
13 the next report states. Is that correct?

14 A I guess.

15 Q Okay. Do you recall talking to the police any
16 time between November 20th and January 26th or January 18th
17 of 1990?

18 A Talking to the police or talking to who?

19 Q Talking to the police?

20 A About?

21 Q About anything. Did you talk to them about
22 other stuff?

23 A Well, I had got arrested in between that time
24 under a phony name and got out. If you call that talking to
25 the police, yeah.

1 Q Okay. So you talked to them because you were
2 arrested for giving them a phony name?

3 A No. I gave them a phony name at the time they
4 arrested me and I got out. See, I was a fugitive.

5 Q I see.

6 A You understand that it was a crime to give a
7 phony name to the police?

8 A Well, most of the things I did back then were
9 crimes.

10 Q Okay. And when you -- after you gave them that
11 phony name, you again got out of jail, is that correct?

12 A Yes, I did.

13 Q And then -- the way you got to talk to the
14 police on January 18th of 1990 is because you were arrested
15 on some warrant for crimes, is that correct?

16 A Yes. Yes, I was captured.

17 Q Okay. And after you were captured, you were
18 transported to the Salem control office or patrol office,
19 and the police interviewed you?

20 A I recollect, if that's what happened that day.

21 Q Okay. And they told you that they had had a
22 little difficulty locating you because you had these
23 warrants out for you, is that correct?

24 A That's right.

25 Q Now, when you talked to the police on January

1 18th and, again, we'll be going through the report, and this
2 is the reports that were given to us by the District
3 Attorney's office. You stated in that report that after you
4 gave Jodie a ride to Safeway because she wanted to go there,
5 that you drove her out to the Bender residence on Hyacinth
6 Street and dumped her there?

7 A If that's what is wrote down there. I don't
8 recall every conversation I had with them. I had quite a
9 few conversations with them.

10 Q Quite a few talks?

11 A Yes, definitely.

12 Q And told them quite a few lies?

13 A Yes, I had.

14 Q Now, in that report, that -- you related that
15 you had heard some talk on the street about the Michael
16 Francke murder. Would it be fair to say that you heard
17 quite a bit of talk on the street about the Michael Francke
18 murder?

19 A What do you consider quite a bit?

20 Q Well, would you -- I would -- I guess the
21 question would be is you heard a lot of different people
22 talking about it?

23 A I heard a few things about it, yeah.

24 Q Okay. And a lot of the people that were in the
25 drug world knew that Michael Franke had been murdered?

1 A I can't speak for anybody else but myself.

2 Q Well, you had heard that he had been murdered?

3 A Yes.

4 Q And you had read the newspaper and a heard a lot
5 of the different theories about why he was murdered, didn't
6 you?

7 A No. I didn't follow the newspaper.

8 Q So really your information would have been just
9 talk from the street like you told the police?

10 A More or less.

11 Q Okay. And during that interview then you told
12 the police that you had heard about the murder from Jodie
13 Swearingen. That's what the report states?

14 A I guess that's what I said.

15 Q Okay. And then also you told that -- after you
16 talked to Jodie Swearingen, that you thought maybe John
17 Bender was involved?

18 A If that's what is wrote down there.

19 Q That's what is wrote down. At that time, you're
20 telling the police you thought maybe John Bender was
21 involved and, also, you told the police that you talked to
22 Sam Harmon and that he told you some information about the
23 Michael Francke homicide. And so, if that's written in the
24 report, that doesn't surprise you either, does it?

25 A No, it doesn't.

1 Q And then you told the police that you thought
2 that you obtained five knives since the day of the murder
3 from John Bender?

4 A At least that many.

5 Q Okay. Maybe -- maybe you had even given him
6 more knives?

7 A I had given him or he had given me?

8 Q No, that he had given you?

9 A Okay. Yeah.

10 Q Okay. And would it be likely that some of these
11 knives that John Bender gave to you were in exchange for
12 drugs?

13 A Yeah. I would probably say for sure they were.

14 Q Okay. And you also told the police that you
15 believed that one of the knives, a folding two bladed pocket
16 knife might have been the murder weapon?

17 A I don't recall, but if that's what it says.

18 Q That is exactly what the report says. It says
19 may be the murder weapon as it was the one you obtained from
20 Bender most recently after the murder. And then you further
21 stated that you had gotten that knife from Bender, two or
22 three, after the Hyacinth Street house was busted and that
23 Bender and his wife, Kelly, both came to your apartment
24 located at 658 Center Street and you paid them five dollars
25 for that knife?

1 A I guess. If that's what is wrote down there.

2 Q That's exactly what is written down. And then
3 you told the police that the knife was located either at one
4 of two places in Salem, either the residence of Sherry
5 Sanders or a friend of yours. Why did you think the knife
6 was located at one of those two places?

7 A I thought I still had it with me at the time.

8 Q Now, again, this is during the January interview
9 that you're having with the police?

10 A Which January interview?

11 Q January 20th, 1990?

12 A I thought you were talking about the one on
13 January 18.

14 Q We're moving on.

15 A Okay. See, you have to clarify when you change
16 days so I know which one you're talking about, if you would.

17 Q Okay. We'll clarify that.

18 A Thank you.

19 Q Now, in this same report of January 18th the way
20 the police have written up the report, Mr. Harden, is first
21 they go through January 18th, and we have covered part of
22 the report there, and then, in the same report, it moves on
23 and changes the date to January 20th, 1990. And that's
24 where we're looking at right now.

25 A Okay.

1 Q And now this is two days after the police first
2 talked to you in January. And what the report states is, at
3 that time, Harden reiterated the information he was giving
4 was truthful. And by "reiterated" it means you were
5 emphasizing or telling the police over and over the way
6 you're telling them now is truthful. Okay. That's what the
7 report states. And then, it states that you stated you were
8 not at the murder scene. That you had just heard about it.
9 And that you had retold previous accounts of it from what
10 you heard through Jodie Swearingen and your friend Sam who
11 the police identified as Frank Harmon. Would you agree that
12 Frank Harmon is somebody that you would normally call Sam?

13 A Yes.

14 Q And you persistently maintained that you were at
15 the murder scene.

16 A I was at --

17 Q Right. You persistently maintained that you
18 were not at the murder?

19 A You just said I was at just a minute ago.

20 Q Okay. Perhaps I missread the report. I'll read
21 it very carefully here. It says you persistently maintained
22 that you were not at the murder scene. Okay. So that would
23 be an accurate representation of what you told the police on
24 January 20th, is it not?

25 A I guess. You're reading it.

1 Q That is correct. Now, first of all, are you
2 familiar with the area around the Oregon State Hospital?

3 A You mean the area around it, the immediate area
4 around it or the neighborhood or what.

5 Q First of all, are you familiar with the Oregon
6 State Hospital grounds themselves?

7 A I have been there.

8 Q Okay. Have you ever worked at the Oregon State
9 Hospital?

10 A No.

11 Q Okay. Do you know the numbers of the buildings
12 on the Oregon State Hospital grounds?

13 A Why would I know that?

14 Q Okay. So it would be fair to say, then, that
15 you really don't know specifically the numbers of the
16 buildings or specifically what happens at the different
17 buildings at the hospital, is that correct?

18 A No.

19 Q Okay. In other words, by no, you mean yes?

20 A Yeah.

21 Q Okay. And you are familiar with the
22 neighborhoods around the Oregon State Hospital grounds, is
23 that correct?

24 A Yes.

25 Q Okay. And that is because you lived in that

1 general area?

2 A Well, I drive by the place. At that time, I
3 would drive by it fifteen, twenty times a day.

4 Q Okay. And because of all of the continually
5 driving by, you obviously got familiar with the
6 neighborhood?

7 A Well, that, too.

8 Q And kind of at least knew where the Oregon State
9 Hospital was?

10 A Yeah. You could say I admit I know where the
11 State Hospital is.

12 Q Okay. And on January 20th, at ten o'clock at
13 night you were being asked by two police officers, one a
14 Detective McLain from the State Police, and several other
15 detectives. And then do you recall that they drove you to
16 the Oregon State Hospital grounds that night?

17 A Is that wrote down there?

18 Q Yes, it is?

19 A Then I guess they did.

20 Q Okay. Do you have any independent recollection
21 of your own that they drove you there?

22 A Not right off the top of my head.

23 Q Okay. If you search your memory closely, could
24 you remember them taking you to the hospital grounds?

25 A I don't know. I don't.

1 Q Okay?

2 A I don't know.

3 Q You really don't have any recollection of that?

4 A I don't know what days or dates, you know, they
5 did all of this stuff. No, I don't.

6 Q Okay. But you remember that they took you
7 there?

8 A I think they did once.

9 Q Okay. Do you remember what part of the hospital
10 grounds that they took you to?

11 A Which time? I mean they took me to more than
12 one part of the hospital grounds.

13 Q Okay. What are some of the different parts of
14 the hospital grounds that they took you to?

15 A Parking lots.

16 Q Okay. So they drove you into the parking lot.
17 What other areas did they drive you to?

18 A Just parking lots.

19 Q Okay. Do you remember them taking you to any
20 other areas?

21 A No.

22 Q Okay.

23 A If you mean inside the building, they didn't
24 drive me inside none of the buildings, no. They didn't take
25 me inside of none of the buildings, no.

1 Q Okay. So they didn't take you inside any of the
2 buildings?

3 A No.

4 Q Did they take you anywhere else outside of the
5 buildings on the Oregon State Hospital grounds?

6 A Yeah, parking lots because we were in the car.

7 Q Okay. Did they take you to any other place
8 besides the parking lot?

9 A They took me to Arby's.

10 Q And what did you do at Arby's?

11 A I sat and ate.

12 Q Okay.

13 A I missed my chow.

14 Q Okay. And the police paid for what you had to
15 eat, is that correct?

16 A Well, I was in jail clothes and didn't have no
17 money on me. They kind of had to.

18 Q And did you go to the Oregon State Hospital
19 grounds after you went to Arby's or before?

20 A I don't recall.

21 Q Now, at about 10:40 on January 20th, 1990,
22 you're still talking to the police?

23 A Is this 10:40 at night or in the morning?

24 Q 10:40 at night.

25 A Okay.

1 Q And at that time, according to the report, you
2 advised that you now recalled that rather than Jodie
3 Swearingen just showing up at your residence, that you
4 recall receiving a phone call from her and you sent Adam in
5 his car to Dundee to pick her up?

6 A I think I told you that just a little bit ago,
7 didn't I?

8 Q You said -- we were talking a little bit ago and
9 as you basically made it clear, you like to go by date,
10 November 20. And on November 20th, 1989, you didn't tell
11 the police that you sent Adam Hernandez, that you picked
12 him, to send him up?

13 A I told you in the conversation that I sent one
14 of my associates in one of my cars to pick her up. Okay.

15 Q Okay. We recognize now that a couple months
16 after the November 20th interview, yes, you are saying --
17 you're saying now that instead of telling Jodie she hit her
18 head if she thinks you're going to go pick her up at Dundee.
19 Now what you're telling the police is that you sent one of
20 your associates, Adam, to Dundee to pick her up?

21 A Yeah. I didn't go. Right.

22 Q You did not go. You sent Adam Hernandez to go?

23 A Right.

24 Q And that you were aware that Adam's last name
25 was Hernandez?

1 A (Nodding in the affirmative)

2 Q Now, is it still your testimony at this point
3 that you sent Adam Hernandez to Dundee to pick up Jodie
4 Swearingen?

5 A I think so. That -- if that's what is wrote
6 down there.

7 Q Okay. Well, let's maybe use your own memory or
8 your own recollection a little bit on that. What is -- what
9 do you remember about that now?

10 A I don't remember.

11 Q Okay. So now you can't remember whether you
12 sent someone to pick her up?

13 A That's right.

14 Q Now, about 11:20 p.m. on January 20th, 1990, you
15 told the police that you wanted to end the interview. And
16 at that time they took you back to the Marion County jail.

17 Now, the next morning, January 21st, 1990, and, again,
18 I'm getting this from the report, you were interviewed by
19 the police again. And the police talked to you for about an
20 hour and a half and then they didn't really write too much
21 in the report about what you said, but, at about twelve
22 o'clock, you were taken out to the Dome Building grounds
23 again, a second time. And you were, again, taken to the
24 parking lot. So, do you recall that? You at least were
25 taken to the parking lot in front of the Dome Building on

1 more than one occasion?

2 A I don't remember.

3 Q So this happened on January 21st, 1990. And
4 it's about a year and two months later now and you really
5 don't have any recollection of whether that happened or not?

6 A That's right.

7 Q Have you used -- do you think that any drugs
8 that you may have used since that time may have affected
9 your memory somewhat?

10 A I was in incarceration since that time and in a
11 drug treatment program since that time so I don't see how I
12 could have used any drugs that would have altered my memory.

13 Q Okay. What was that time that you ended up
14 doing five days in the Restitution Center for indicting a
15 bad UA?

16 A A dirty UA, yes.

17 Q What does a dirty UA mean?

18 A Use of drugs.

19 Q Okay. About what time did that happen?

20 A I don't remember.

21 Q Okay. But you recall that one time when you
22 were on your probation you used drugs?

23 A I think it was March, maybe.

24 Q Okay. Would that have been 1990?

25 A 1991.

1 Q 1991. So that was just a couple months ago
2 then?

3 A Yeah. This is May.

4 Q Now, on January 22nd, 1990, the police contacted
5 you again at the Marion County jail. And would it be
6 correct that you could at least remember the police had
7 quite a few interviews with you?

8 A Yeah, I do recall they had quite a few
9 interviews with me. I don't recall the dates and the times,
10 no, I don't.

11 Q Okay. And at the interview just the day before,
12 which was January 21st, 1990, you asked that you have your
13 attorney present?

14 A If that's what it says.

15 Q That's what it says. So, at that point you had
16 your attorney with you. And I assume he advised you to tell
17 the truth, is that correct?

18 A I don't recall the conversation to tell you the
19 truth.

20 Q Okay. Now, after the January 22nd interview,
21 and in this particular report they really don't use
22 specificity too much about what you actually said, they
23 transported you back to the Marion County jail and they let
24 you stay in jail for a couple days. And they came back on
25 January 24th, 1990, and they again picked you up at the

1 Marion County jail and they transported you to the State
2 Police District II headquarters. And during that interview,
3 you told the police that although previously you said you
4 had been with Frank Gable earlier in the day, what the
5 report states is you did, at that time, admit that you had
6 been untruthful about having been with Gable earlier in the
7 day.

8 So now in that January 24th report, basically, then
9 you were telling the police that you were lying about being
10 with Frank Gable earlier on the day of the 17th, is that
11 correct?

12 A If that's what it says.

13 Q That's what it says. You told them that. You
14 were lying about that. Would it be fair to say that you
15 thought that that statement that you had been with Frank
16 Gable earlier in the day would make the State Police more
17 likely to believe the story you were telling them?

18 A I don't recall what was going through my mind at
19 the time.

20 Q Now we're coming up to -- it's 7:40 p.m. on
21 January 24th, 1990, and, at that time, the report states
22 that Sergeant Salle and another officer again drove you
23 around the area of the Dome Building. Do you recall that?

24 A I don't recall it. No, I don't.

25 Q But it wouldn't surprise you that they took you

1 out there again to take a look at the Dome Building?

2 A If that's what it says.

3 Q That's exactly what it says. Now, would it
4 surprise you, Mr. Harden, that you had been taken out to the
5 Dome Building to look at the grounds prior to ever being
6 shown an aerial photo in this case?

7 A I seem to recall -- I don't remember exactly
8 when it was they showed me the pictures.

9 Q Okay. Well, according to the reports, on
10 January 20th they took you out to the grounds. And,
11 according to the same reports, after they took you out to
12 the hospital grounds, they then showed you an aerial
13 photograph?

14 A Doesn't say they showed me any before that?

15 Q No, it doesn't?

16 A So they may have or they may not have.

17 Q So what the report is, though, is that you were
18 taken to the grounds, shown the grounds, and then, after you
19 saw the grounds, then you saw the aerial photograph?

20 A I don't know. I wasn't doing the investigation.

21 Q Okay. So it wouldn't surprise you, though, if
22 that was the sequence of events?

23 A I don't know.

24 Q Now, did you really drive back and forth by the
25 state hospital fifteen or twenty times a day?

1 A At least that many times.

2 Q Would it surprise you that when you gave a
3 statement to the police on January 21st, 1990, that you told
4 them that you drove by the state hospital about twice a day?

5 A I don't recall. If that's what it says, I must
6 have said that to them.

7 Q Okay.

8 A I lived on Center Street. That's where the
9 State Hospital is located.

10 Q Okay. And so now you're pretty -- but you have
11 got your own recollection that you drive by the hospital at
12 least fifteen or twenty times a day?

13 A I was just giving a figure to them. I couldn't
14 tell exactly. Can you tell me how many times you drive by a
15 spot during a day?

16 Q I'm not going to pin you down and say did you
17 drive by seventeen times. Ballpark, though, you think
18 fifteen or twenty times is pretty accurate?

19 A It depends on the day, how much dope I was
20 selling.

21 Q So the more dope you were selling, the more
22 times you would be driving by the hospital?

23 A That's right.

24 Q Now, in the same January 21st statement that you
25 made to the police you told them that Jodie Swearingen was

1 about seventeen years old. Do you recall that?

2 A If that's what it says.

3 Q That's what it says. And I guess what that
4 would mean is at least at that time you knew that Jodie
5 Swearingen was under the age of eighteen. Would that be
6 fair to say?

7 A I guess.

8 Q Okay. Can you think of anyone -- any way that
9 that would mean that she wasn't under the age of eighteen?

10 A I don't see where it matters.

11 Q Do you think that there is any problem with
12 somebody that would want to have sex with somebody that is
13 not an adult?

14 A Depends on the two people.

15 Q So it might not be a crime in your mind?

16 A I don't know.

17 Q Now, in the January 21st, 1990, report the
18 police asked you where did you park, do you remember? And
19 your statement was, at that time, is not really precisely
20 exactly where I parked at. Do you recall making that
21 statement?

22 A Is that what it says.

23 Q That's exactly what it says.

24 A I don't recall making it, no.

25 Q Okay. But it wouldn't surprise you if you told

1 the police that you didn't remember where you parked at that
2 time?

3 A Anything I told the police at that time wouldn't
4 surprise me.

5 Q Were you on drugs at that time?

6 A What was the date?

7 Q This was January 21st, 1990?

8 A Not unless they were given to me without my
9 knowledge while I was in jail.

10 Q Is it possible you were coming down from drugs
11 at that time?

12 A No.

13 Q You weren't using drugs then?

14 A In jail, no.

15 Q Let's just step back just a little bit prior to
16 going to jail on January 18, 1990.

17 A Yes.

18 Q Were you using drugs then?

19 A Yes.

20 Q Okay. Would it be fair to say that you were
21 using them just before you had been arrested?

22 A It's fair to say.

23 Q Okay. Now, you stated in that statement that
24 when Jodie Swearingen called you to pick her up, you didn't
25 have any problem at all with picking her up, is that

1 correct?

2 A Which statement? Picking her up where?

3 Q January 21st, 1990.

4 A Picking her up where?

5 Q At the Oregon State Hospital.

6 A I guess not. If that's what it says.

7 Q Okay. Now let's try to go back a little bit on
8 your own recollection, if -- if you have any. And do you
9 have any recollection as to whether or not you would have
10 had a problem picking up Jodie Swearingen at the Oregon
11 State Hospital?

12 A What do you mean by a problem?

13 Q Do you think that it would have been a burden on
14 you?

15 A It was an inconvenience, yes.

16 Q Now again, and I'm very carefully stating what
17 -- which statement so that we don't lose track of ourselves
18 and the time we're at, January 21st, 1990, that's a Sunday,
19 and it's 5:30, sometime after 5:24 p.m. at night, and you
20 are talking to the police about where you were parked when
21 you told the police what you say what you saw.

22 A What did it say I saw when I was parked there?

23 Q Well, Mr. Harden, I'm going to ask you a number
24 of additional questions and when we get to that area, I'll
25 ask you those things.

1 A I just wondered.

2 Q Right now what you're telling the police is
3 about how far away you were. The first thing that you say
4 was that you were approximately one hundred yards away. It
5 wasn't very far away at all. And the police officers that
6 was -- questioned you then stated, "Now when we pulled out
7 there earlier today, I don't think that is a hundred yards
8 across there." And you stated, "Maybe fifty yards. I know,
9 you know, it's hard to guess."

10 A Well, I'm not an expert at judging distance, so
11 I couldn't tell you.

12 Q Okay. So, when you're telling the police
13 basically you were guessing?

14 A Probably. If that's what it says.

15 Q And it appears that when you were out there
16 maybe you had a chance to revise your distances a little
17 bit, is that possible?

18 A I don't think so.

19 Q Now, going back to what you recall today, do you
20 recall seeing Michael Francke inside the car itself?

21 A No.

22 Q Would it surprise you that back on January 21st,
23 1990, during that interview that happened after 5:24 p.m.,
24 that the police asked you, "But you saw Francke inside the
25 car?" And your response was, "Yes, I did."

1 A I think they meant Frank at the time.

2 Q And that is despite the fact that they used the
3 name Francke when they asked you the question?

4 A When you're asked a lot of questions, Frank and
5 Francke, you know, when you're talking about two people the
6 names sound a lot alike, I may have said it.

7 Q It would have been pretty easy for you to get
8 mixed up, huh?

9 A About the names, yes.

10 Q And during that same interview they asked you
11 this question. They said, "You said you had the window
12 rolled down about six inches, do you know if you were
13 looking out through the open area or you were looking
14 through the glass?" And you stated at that time, "I don't
15 recall. I can't remember if I was looking out the crack,
16 the crack was like half the window anyway." So, if that's
17 what the statement says, then, that is what you said on that
18 date, is that correct?

19 A Yes.

20 Q And, again, and this is that same interview,
21 January 21st, and you were talking about Francke, not Frank
22 Gable, and it said, "Could you tell if he fell into the car
23 or away from the car?" And your response was, "I couldn't
24 tell. The door was open, and I assumed he fell forward.
25 Well, he fell more or less on Gable himself." Does that

1 accurately reflect what you told the police that day?

2 A If that's what is wrote down there.

3 Q Now of course that could easily change in later
4 interviews, is that correct?

5 A I don't know.

6 Q Okay. Well, because your story was kind of
7 continually changing interview from interview, would it be
8 fair to say that?

9 A I don't know.

10 Q Okay. Well, if the interviews themselves show
11 that, would you agree that your story changed quite a bit?

12 A Everything but what I told them I seen.

13 Q So then it would be your testimony today that
14 nothing that you said that you saw changed in any of your
15 stories?

16 A Not what I seen.

17 Q Your Honor, I'm going to spend some additional
18 time with Mr. Harden. Does the Court feel that a break is
19 appropriate at this time?

20 THE COURT: We'll do it.

21 (Jury out) 3:15

22 MS. MOORE: Can counsel approach the bench?

23 THE COURT: Sure.

24 You may step down.

25 (Recess) 3:15 - 3:55

1 THE COURT: Why don't we have Mr. Harden return
2 to the witness stand, please. And you're still under oath.
3 And the jury, please.

4 (Jury in) 3:55

5 THE COURT: Please continue.

6 MR. STORKEL: Thank you, Your Honor.

7 Mr. Harden, earlier you stated that you got a general
8 discharge from the Marine Corps. Could you tell us why you
9 got a general discharge?

10 THE WITNESS: Because I was doing time in the
11 county jail.

12 MR. STORKEL: And what was that for?

13 A I was on an Assault charge.

14 Q So then it would be accurate to say that you got
15 that discharge because of criminal conduct while you were in
16 the Marine Corps?

17 A No. I think it's specified unable to adapt to
18 military life. I think that was the exact heading under my
19 general discharge.

20 Q I see. And that stemmed from that criminal
21 charge?

22 A No. I was AWOL at the time.

23 Q I see. And then from -- in 1988, you came to
24 the Salem area, is that correct?

25 A One time, yes.

1 Q Okay. And at that time one of the things you
2 were doing was buying and selling cars?

3 A Yes.

4 Q And also at the same time you were selling
5 methamphetamine?

6 A Yes.

7 Q Did you use the cover of buying and selling cars
8 as a way to show that you had some legitimate income?

9 A No.

10 Q It was just something that you just did a long
11 with selling methamphetamine?

12 A Yes.

13 Q And it's your testimony that at no time you ever
14 gave Jodie Swearingen any dope, is that correct?

15 A To my knowledge, no.

16 Q Now this is specifically in relation to you, is
17 there some way you could have given her dope without your
18 knowledge?

19 A No.

20 Q Okay. Now, in the earlier part of your
21 testimony you stated that the reason that you remembered
22 Frank Gable is that you make a habit of remembering the
23 faces of rats or informants, is that correct?

24 A I -- people I thought were, yes.

25 Q Okay. So if you suspect that somebody is, then

1 you try to remember their face?

2 A That's right.

3 Q And did you suspect that Mr. Gable was a rat or
4 in informant?

5 A Yes, I did.

6 Q What do you think of rats or informants?

7 A Not a whole lot.

8 Q Do you think they're some of the worst people
9 around?

10 A I wouldn't say that.

11 Q Okay. More specifically, would you say -- not a
12 whole lot, what are your thoughts about that?

13 A Not a whole lot about what?

14 Q Well, you stated just a moment ago that you
15 don't think a whole lot of someone that is a rat or an
16 informant?

17 A I don't think highly of them.

18 Q Okay. Then you would have a low opinion of
19 somebody?

20 A I really don't -- I guess you would say that,
21 yeah.

22 Q Now, you said that you had privately retained an
23 attorney to represent you, is that correct?

24 A Yes.

25 Q And what is his name?

1 A John W. Jensen.

2 Q Prior to testifying in court today, did you or
3 your attorney work out some type of understanding with the
4 District Attorney's office?

5 A An understanding? What do you mean by that?

6 Q Did you come to some sort of an agreement?

7 A Agreement about what?

8 Q For instance, whether or not you yourself could
9 be prosecuted for any crimes?

10 A No.

11 Q Okay. You have absolutely no agreement with the
12 District Attorney's office?

13 A No, I don't.

14 Q Did your attorney, John Jensen, work out any
15 type of agreement with the District Attorney's office on
16 your criminal charges?

17 A No, he has not.

18 Q At the time your criminal charges of Possession
19 of Controlled Substance, Failure to Appear, and your
20 probation violation were pending, did your attorney John
21 Jensen negotiate with the District Attorney's office?

22 A I can't speak for him, no.

23 Q Okay.

24 A I don't know. You would have to ask him that.

25 Q So, did you think that you had any kind of

1 agreement with the District Attorney's office when you went
2 in to court and plead guilty to those charges?

3 A Just the standard plea agreement to drop the two
4 for the other two.

5 Q So, you recall now that you did have a plea
6 agreement with the District Attorney's office?

7 A I guess you would call it an agreement. Just a
8 standard. I have had cases before, no different than any
9 other case that I have ever been in front of.

10 Q Right. And so it would be your understanding
11 from your prior experience with the system that you pled
12 guilty to some charges and you had some charges dismissed?

13 A That's right.

14 Q And what were the charges that you had
15 dismissed?

16 A A Possession of a Firearm that was found in the
17 building I was in, and a Delivery charge.

18 Q Okay. So they dismissed a charge where you had
19 -- there was some evidence that you delivered controlled
20 substances, drugs?

21 A They never produced no evidence. No. Mine was
22 a house raid. It was not a controlled buy or anything like
23 that, no. They just raided my house and found drugs there
24 and they just stuck me with everything they could when they
25 arrested me. Standard procedure.

1 Q Okay. Do you think that there would be any
2 possibility that the District Attorney's office would charge
3 you with any of the deliveries that you're admitting on the
4 stand today?

5 A I don't know.

6 Q Do you recall your attorney working out any kind
7 of agreement regarding the fact of whether or not you would
8 be prosecuted for anything that you told the State Police
9 about what happened on the hospital grounds?

10 A I don't recall that. No. I don't -- you'd have
11 to ask my attorney something like that.

12 Q Okay. Would you be surprised if you learned
13 that you weren't going to be prosecuted for any statements
14 that you had made to the police about what you're saying
15 happened on the hospital grounds?

16 A Yes.

17 Q What do you understand your agreement to be?

18 A What agreement?

19 Q Do you understand that you have any agreement
20 whatsoever with the District Attorney's office?

21 A About what?

22 Q About any type of prosecution on any charges?

23 A Pertaining to?

24 Q Pertaining to this case?

25 A I don't know.

1 Q Now, Mr. Harden, I would like to review a few
2 things because some things that you have told us today, we
3 want to make sure that we understand exactly where you're
4 coming from. First off, now, you're absolutely positive
5 that you never had to see a picture to recognize Frank Gable
6 when the police talked to you in the fall of 1989, is that
7 correct?

8 A What do you mean? No, I don't need a picture,
9 no.

10 Q Okay. And it's your recollection that they
11 didn't show you any picture of Frank Gable, is that correct?

12 A I don't remember it, no.

13 Q And, in fact, would it be your testimony that
14 you would deny ever having seen a picture of Frank Gable
15 during that interview?

16 A Without knowing for sure, I couldn't deny or
17 admit to anything.

18 Q Okay.

19 A Without knowing for sure.

20 Q Okay. Now, when you said that Frank gave you a
21 ride home from the Bender's one time in a maroon colored
22 Toyota, was that the truth or was that a lie?

23 A That was the truth. I didn't say he gave me a
24 ride home. I said he gave me a ride to a friend's house, if
25 you will think, because, in fact, he dropped me off on Fifth

1 Street and Commercial.

2 Q So then if you told the police that Frank gave
3 you a ride home from the Bender's one time in a maroon
4 colored Toyota, then that would be a lie?

5 A Yes. If I said home, yes.

6 Q You said a ride home from the Bender's, so that
7 was a lie, then?

8 A Yes. I lied to them numerous times.

9 Q You said that you gave two dollars to Frank
10 Gable for that ride home. Was that the truth or was that a
11 lie?

12 A I don't recall to be honest with you.

13 Q So, really the truth would be that you have no
14 idea whether you gave Frank Gable any money for that ride or
15 not?

16 A That's right.

17 Q Now, on November 20th, 1989, when you told the
18 police that you -- well, first off, let me ask you a
19 question so that you know who I'm talking about and so I
20 know who I'm talking about. You said, "Janet." When you
21 would be referring to somebody named Janet, who would that
22 be?

23 A That would be Frank Harmon's sister.

24 Q And how long did you know Janet?

25 A At that time not very well.

1 Q Have you gotten to know her better since then?

2 A I wouldn't say better, I would say more.

3 Q Okay. On November 20th, 1989, you told the
4 police that you remembered that Janet had moved out of John
5 and Kelly's place the first time that you met Frank Gable
6 after the January 20th, 1989, dope raid on the house by the
7 Salem Police Department. Is that the truth or is that a
8 lie?

9 A I don't recall.

10 Q Okay. So, then the truth would be -- is you
11 don't really remember the first time that you met Frank
12 Gable?

13 A No. The truth is the first time I met Frank
14 Gable was that night when he gave me a ride home.

15 Q Had -- you just said a moment ago -- and correct
16 me if I'm wrong, just -- didn't a moment ago you say that --
17 you said that Mr. Gable didn't give you a ride home, he gave
18 you a ride to your friend's house?

19 A Well, a ride. I'll put it a ride. In fact, he
20 gave me a ride to Woody's house because he lived there, but
21 I didn't let him take me all of the way to the house. I had
22 him drop me off on a corner because I didn't trust him.

23 Q I see. So now instead of what you told the
24 police on November 20, you remember now that you were
25 dropped off on a corner?

1 A At Fifth Street and Commercial.

2 Q Okay. And in regards to that statement where
3 you told the police a date when you first met Frank Gable,
4 now you can't remember the date when you first met Frank
5 Gable, is that correct?

6 A I can't put a date to that night, no.

7 Q Now, on November 20th you said that the second
8 time that you saw Frank Gable was a few months ago at a
9 guy's house near 16th and Hine Street. Is that the truth or
10 is that a lie?

11 A That was a lie. I told them a lot of lies.

12 Q We understand that. And then right after you
13 made that statement, then you said the guy's name is John,
14 and he drives a green Nova, and John lives near smelly
15 Shelli. And you said that you saw Frank Gable getting a
16 beer from John's refrigerator. Would that also be a lie?

17 A Yes.

18 Q Previously you stated that you didn't know
19 whether or not Jodie Swearingen was eighteen years old. Was
20 that the truth or was that a lie?

21 A At which time did I know she was that age or
22 not.

23 Q Today?

24 A I know it today, yes. I do know it today. But
25 back then, did I know it? I don't think I did.

1 Q Okay.

2 A She didn't look eighteen. I mean, come on.

3 Q When you -- when you said that you had had
4 sexual intercourse with Jodie Swearingen a couple of times,
5 was that the truth or a lie?

6 A It's the truth.

7 Q To your knowledge, did Jodie Swearingen have sex
8 with people for drugs?

9 A I don't know what her social life was. I can't
10 say.

11 Q Okay. You have no idea about her social life?

12 A No.

13 Q Okay. When you told the police that you had
14 known Ms. Swearingen for about a year, was that the truth or
15 was that a lie?

16 A Yeah. It's the truth.

17 Q Okay. And during that time you didn't learn
18 anything about her social life?

19 A I don't know the social life of every girl I go
20 out with. I go out with quite a few girls.

21 Q Now, in your November 20th, 1989, statement you
22 stated that Jodie was screwing everyone and you think that
23 Jodie has a boyfriend named Ron. Was that the truth or was
24 that a lie?

25 A Truth.

1 Q Would that be some knowledge about her social
2 life?

3 A Just a statement made. Not knowledge, I didn't
4 say it for a fact. I just said -- I just made a statement.

5 Q Now, when you told the police on November 20th,
6 1989, that Jodie called you at your mom's place and wanted
7 you to drive to Jodie's dad's house in Dundee and give her a
8 ride to Salem, the report states that you told her that she
9 must have hit her head if she really thought that you were
10 going to drive to Dundee to get her, is that the truth or is
11 that a lie?

12 A I told her she must have bumped her head if she
13 thought I was going to go get her. Yes, I did.

14 Q So then that was the truth?

15 A Yes.

16 Q And that's when she called and asked for a ride?

17 A Earlier in the day, yeah.

18 Q When you told the police that, again, on
19 November 20th, 1989, that you didn't remember if Jodie
20 Swearingen and Frank Gable had been at John and Kelly's
21 house at the same time, was that the truth or was that a
22 lie?

23 A I don't recall.

24 Q So, would it be your testimony today that you
25 have no recollection of whether or not you saw them there at

1 the same time?

2 A No. I'm saying I don't recall telling the
3 police that.

4 Q At this time, do you have any recollection about
5 that?

6 A Not right now, no. I don't recall.

7 Q When you told the police that you had a large
8 knife collection, was that the truth or a lie?

9 A Well, it's the truth. They still have quite a
10 few knives of mine in evidence right now.

11 Q So then the police seized a lot of your
12 collection?

13 A A little better than three hundred, I think.

14 Q When you told the police that you didn't trade
15 or sell knives, was that a lie or was that the truth?

16 A What do you mean trade or sell for them or give
17 them away?

18 Q To give them away?

19 A At that time, no.

20 Q So, your practice would be, although you would
21 accept knives from people, that you wouldn't give any knives
22 away, is that correct?

23 A Not the ones I wanted, no.

24 Q When you told the police on January 18th, 1990,
25 that you dropped off Jodie Swearingen in West Salem so she

1 could talk with Ron Bissonette, was that the truth or was
2 that a lie?

3 A That was a lie.

4 Q When you told the police that you had heard talk
5 on the street about the Francke murder, was that the truth
6 or a lie?

7 A It was the truth.

8 Q And it would be your testimony today that you
9 don't remember the date of the first time that you met Frank
10 Gable, is that correct?

11 A The date, no.

12 Q When you told the police that John Bender was
13 involved in the murder of Michael Francke, was that the
14 truth or was that a lie?

15 A That was a lie.

16 Q Now, you told the police that you thought you
17 had obtained the murder weapon that was used to kill Michael
18 Francke from John Bender, was that the truth or was that a
19 lie?

20 A It was a lie.

21 Q Now, it is true that you were giving the police
22 information about what you were saying you knew about the
23 Michael Francke homicide, is that true?

24 A I lied to them a lot.

25 Q Okay. About what you knew about the homicide,

1 correct?

2 A Well, I had lied a lot about what I did, but not
3 what I seen that night. I did see Frank Gable stab Michael
4 Francke.

5 Q Now, as we move on here, you say -- you said
6 previously that you had seen Jodie Swearingen talk to Ron
7 Bissonette in the parking lot of the Safeway in West Salem.
8 And you previously stated that that was a lie. So, that
9 part of what you told the police you had seen was a lie, is
10 that correct?

11 A That's right.

12 Q So you did lie about some of the stuff that you
13 told the police that you had seen?

14 A I lied about a lot of things I told the police.

15 Q Did you, when you told the police that you would
16 tell them where the knives that you had obtained from John
17 Bender could be located, was that the truth or was that a
18 lie?

19 A That was a lie so I could go to the two houses I
20 went to, to let the people know I was in jail, to take care
21 of my stuff.

22 Q So you kind of worked the police to your
23 advantage there?

24 A Yes, I did at that time.

25 Q Were those people actually there?

1 A The people at the house? Yes, they were.

2 Q So then they did find out that you were in jail,
3 to take care of your stuff?

4 A That's right.

5 Q Did you have a chance to tell them to take care
6 of your stuff?

7 A Yes.

8 Q Now, at 4:39 p.m., the report says that you were
9 advised of your rights and signed a standard rights card,
10 and do you have any recollection of that? That they advised
11 you of your rights when they were asking you these
12 questions?

13 A I don't recall.

14 Q Now, this is again on January 20th, 1990, over a
15 year after the homicide. You stated to the police that the
16 information you were giving was truthful. And you stated
17 you were not at the murder scene, that you just heard about
18 it, and retold your previous accounts of hearing it through
19 Jodie Swearingen and your friend Frank Harmon, and
20 persistently maintained that you were not at the murder
21 scene. Now, despite the fact that you were reiterating to
22 the police that the information you were giving was truthful
23 and persistently maintaining that you were not at the murder
24 scene, is that the truth or was that a lie?

25 A That was a lie.

1 Q Now you do have an actual recollection that you
2 were taken out to the Oregon State Hospital grounds to see
3 the parking lot, is that correct?

4 A Yes.

5 Q And you, when you told the police that you
6 couldn't remember precisely where you were parked, was that
7 the truth or was that a lie?

8 A Which time?

9 Q On January 21st, 1990?

10 A I don't recall.

11 Q So would it be fair to say at some point in time
12 you told the police you didn't remember where you parked?

13 A I don't think -- I don't think I told them that.
14 I don't know. I can't tell you. I don't remember.

15 Q Okay. So you don't remember whether you
16 remembered where you parked or not?

17 A I don't recall. I don't remember making a
18 statement to them whether I didn't remember where I parked
19 or not.

20 Q Now, when you later told the police on January
21 20th, 1990, that you sent Adam Hernandez to Dundee to pick
22 up Jodie Swearingen, is that the truth or was that a lie?

23 A That I had sent Adam?

24 Q Yes?

25 A That was the truth.

1 Q Okay. So, you're saying that you recall that
2 you did send Adam Hernandez to Dundee to pick up Jodie
3 Swearingen, is that correct?

4 A I recall telling them that I did, yes.

5 Q Do you recall that that is what actually
6 happened?

7 A I don't remember.

8 Q So now you don't have any independent
9 recollection of whether you did that or not?

10 A Whether I sent Adam? No, I don't.

11 Q So, as far as that is concerned, you just don't
12 have any idea?

13 A That's right.

14 Q At the time you told the police that, did you
15 think that was true or did you think that was a lie?

16 A I don't remember. I don't remember what I was
17 thinking that day.

18 Q Now, at some point you tried to -- you quit
19 lying to the police and -- and you started telling the
20 truth, is that correct?

21 A Yes.

22 Q Would it be fair to say that in -- by the time
23 we got to February of 1990, that you were no longer lying to
24 the police but you were telling them the truth?

25 A The only statement I can say for sure was not a

1 lie to the police was the one I signed.

2 Q So, it is very possible, then, that in any
3 report that you gave to the police you might have been
4 lying?

5 A Yes.

6 Q On March 15th, 1990, you stated to the police
7 that you sent Adam Hernandez to Dundee to pick up Jodie
8 Swearingen, and that Adam Hernandez drove your Chevrolet
9 short van that is gold in color with California plates to
10 Dundee. Now, when you told the police that statement,
11 again, on March 15th of 1990, do you recall whether that --
12 whether or not that was the truth or that was a lie?

13 A Like I say, I can't really tell you because I
14 can't really remember whether I did or not. I told you that
15 a minute ago. I don't remember.

16 Q Yeah. This is a second time that you told the
17 police this, and later on in your relationship with them. I
18 wanted to see if that jogged your memory at all.

19 Now, you, of course, have been driven out to the
20 parking lot on more than one occasion by the state police on
21 the Oregon State Hospital grounds, but, what is your
22 recollection of what the parking lot looked like on January
23 17th, 1990? Or not 1990, on January 17th, 1989?

24 A What do you mean as to what it looked like?

25 Q Could you describe it?

1 A It looked like any other parking lot. It's
2 round. It has an island in the middle. There is two of
3 them, a driveway on each end plus an access to the parking
4 lot. I do asphalt for a living. It's a parking lot. It's
5 what I do for a living. It's striped, it has poles in it in
6 front of some of the parking stalls with names on them.

7 What else would you like to know?

8 Q And did you see what some of those names on the
9 parking structures were when the police took you out to the
10 Oregon State Hospital grounds?

11 A I don't recall noticing now.

12 Q But you might have noticed but you just don't
13 recall?

14 A No. To this day, I don't think so, no.

15 Q Okay. So to this day you don't really recall
16 what any of those signs say?

17 A No. I don't know what any of them say.

18 Q Do you recall it being light or dark?

19 A It was dark.

20 Q Okay. And what do you recall about cars in the
21 parking lot?

22 A They were parked.

23 Q And now -- you have stated that you recognize
24 different types of vehicles, is that correct?

25 A Yes.

1 Q And so you're not likely to forget what a car
2 looks like, is that correct?

3 A Well, I can't say that for sure. People forget
4 a lot of things, you know. I can't tell you exactly for
5 sure what a car looked like.

6 Q Can you describe the car in the parking lot
7 beside the car that you saw in the photograph today?

8 A I think there was a blue one sitting next to it,
9 four door. About the same make, a little bit older maybe on
10 the other side of it.

11 Q Do you recall anything else out in the parking
12 lot? Just the parking lot in general or --

13 A Just Frank.

14 Q Any cars that were there?

15 A No. Like I said, the only thing that drew my
16 attention was the light coming on.

17 Q About what time do you say that you were there?

18 A It was after six-thirty because my mother plays
19 bingo every night and I had already given her money to go to
20 bingo.

21 Q She plays bingo every night?

22 A She makes a practice of it. Not every night but
23 -- not every night, but regularly. She is a bingo junky.

24 Q And what time -- if you were trying to recall,
25 approximately what time do you think it was?

1 A Around seven o'clock.

2 Q Okay. Do you recall talking to the police about
3 what time you were there?

4 A No, I don't. I think I told them a couple
5 different stories.

6 Q Okay. Did the police tell you that they had
7 evidence about what time you were actually there?

8 A I don't recall.

9 Q Wasn't it true that one of the things that
10 caused you to talk to the police was that you knew that they
11 were telling you things that led you to believe that you
12 couldn't fool them?

13 A No. They just provided enough evidence in my
14 eyes to let me know that they weren't lying and they knew
15 that I was --

16 Q So they gave you information that let you know
17 you were lying, right?

18 MR. BOSTWICK: Your Honor, I think I'm going to
19 object to this particular area. I would ask that the jury
20 be taken out and discuss it with the Court.

21 THE COURT: Let me ask Mr. Storkel if he is
22 going to continue in the area. If he is, we'll have to do
23 that, I guess.

24 MR. STORKEL: Your Honor, I think I can just
25 move on to another question.

1 THE COURT: All right.

2 MR. BOSTWICK: Thank you, Your Honor.

3 THE COURT: You're welcome, Mr. Bostwick.

4 MR. STORKEL: Now, in February of 1990, you told
5 the police that Jodie Swearingen jumped in your car from an
6 unknown direction. Earlier this afternoon you testified
7 that you now recall what direction she came from, is that
8 correct?

9 THE WITNESS: That is correct.

10 MR. STORKEL: And what direction do you recall?

11 A She approached my car from the rear.

12 Q Now, isn't it true you told the police that it
13 was just coincidence that you happened to pull into the
14 right lot at the right time to pick up Jodie Swearingen?

15 A That's right.

16 Q You just kind of got lucky about that?

17 A She got lucky. She is the one that got the
18 ride.

19 Q I see. Now, when you were in the parking lot,
20 what did you think that the building that is located next to
21 the two lots was called?

22 A I had no idea.

23 Q What do you think that the building next to
24 those two lots is called now?

25 A Well, later, I learned it was called the Dome

1 Building.

2 Q Okay. How did you learn that?

3 A It has been public knowledge for quite a while.
4 I think most people in Salem didn't know it was called the
5 Dome Building until this case came about.

6 Q Now, when you gave the police your statement on
7 February 5th, 1990, you told them that Jodie Swearingen had
8 phoned you at your residence to come and get her, and that
9 it had taken you twenty to thirty minutes before you arrived
10 at the Dome Building, to show up. Was that the truth or was
11 that a lie?

12 A Which part? It took me that long to get there.

13 Q Did it take you that long to get there?

14 A Yeah.

15 Q And what part of that statement is -- you seem
16 to be indicating that part of that statement was a lie, what
17 part would be a lie?

18 A I just was clarifying your question. That's all
19 I was doing.

20 Q Okay. And about how far do you live from the
21 Oregon State Hospital grounds?

22 A Right now or then?

23 Q At that time?

24 A Oh, I would say maybe two and a half miles.

25 Q Okay. And are there city streets that you would

1 normally drive on to get to the State Hospital?

2 A Straight up Center Street.

3 Q Okay. And you just told us that it took you
4 about twenty to thirty minutes to go straight up Center
5 Street?

6 A No. I said it took me that long to get there.
7 I didn't say it took me that long to drive there. I didn't
8 drop what I was doing and run. I was doing other things.
9 As a matter of fact, she had to call me twice to come and
10 get her.

11 Q Now, when you told the police that you arrived
12 at the Dome Building, at that time, did you know it was
13 called the Dome Building?

14 A At that time it had been called the Dome
15 Building in every interview that I had, so I pretty much
16 assumed that that's what it was called.

17 Q Okay. So that's something you learned while you
18 were being interviewed?

19 A I don't know if I learned it while I was being
20 interviewed or in the paper or when I learned it. It just
21 became knowledge to me.

22 Q Okay. Your Honor, I would ask that Mr. Harden
23 be handed exhibit 605, defendant's exhibit 605.

24 Go ahead and examine the letter, Mr. Harden.

25 A I have.

1 Q Have you examined it?

2 A Yeah.

3 Q Do you recognize that handwriting?

4 A Yes. It's mine.

5 Q Okay. And who did you send that letter to?

6 A My nephew.

7 Q And what is your nephew's name?

8 A Richard Swaim.

9 Q And is -- does that appear to be a true and
10 accurate or does that appear to be actually the original
11 letter that you sent to your nephew, Richard Swaim?

12 A It seems to be. It has my handwriting on it.
13 It's not a copy.

14 Q Okay. About when did you send that to Richard
15 Swaim?

16 A I don't know. I wrote a lot of letters to a lot
17 of people when I was in jail.

18 Q Okay. Do you remember what year you wrote it?

19 A 1990 or '89. I don't know.

20 Q Do you remember what month of 1990?

21 A No, I don't.

22 Q Your Honor, I would ask that defendant's exhibit
23 605 be admitted into evidence at this time, and ask that it
24 be shown to the state so they may examine it.

25 MR. BOSTWICK: I think we have seen it, Your

1 Honor. We have a copy. We have no objection.

2 THE COURT: Be admitted.

3 MR. STORKEL: I would ask that -- did they hand
4 the letter back to you?

5 THE WITNESS: No.

6 MR. STORKEL: I would ask that the letter be
7 handed back to Mr. Harden.

8 Mr. Harden, I would ask that you go ahead and read
9 that letter outloud to the jury at this time.

10 THE WITNESS: This whole letter?

11 MR. STORKEL: Yes?

12 THE WITNESS: It's kind of like my private thing
13 to my nephew. Do I have to read the the whole thing?

14 MR. BOSTWICK: I object to that. The letter
15 speaks for itself.

16 THE COURT: The letter speaks for itself. If
17 there is a part that you would like to discuss with him at
18 this point in time, I would let him read that part or talk
19 about that part.

20 MR. STORKEL: I'll do that, Your Honor.

21 THE COURT: All right.

22 MR. STORKEL: Now, the beginning of the letter
23 states -- and, of course, you're probably better at reading
24 your handwriting than I am. It appears to say, "Hey,
25 Swinging Swaim," is that correct?

1 THE WITNESS: Yes.

2 MR. STORKEL: Is that kind of a nickname for
3 your nephew?

4 A Yeah.

5 Q And now, you say at -- it's on the first page,
6 you go, "I know it has been a long time between lines, but
7 you know how it is on the run. Hey." From that sentence,
8 would that give you any idea about what time you wrote this
9 letter?

10 A No.

11 Q Do you think that it's at a time after you were
12 picked up on the warrants by the police on January 18th of
13 1990?

14 A I would assume so.

15 Q Okay.

16 A Sometime after that, yes.

17 Q Okay. And that is because at that time, then,
18 you were put in Marion County jail, is that correct?

19 A That's the only time I ever wrote any letters is
20 when I was in jail.

21 Q Okay. And then, again, you state that they have
22 you on Exconvict in Possession of a Firearm, Possession of
23 Methamphetamine, Delivery of Methamphetamine and Failure to
24 Appear. And then -- in the first degree. Okay. With a PV,
25 too. Back it all up in Marion County, in Polk, all they

1 have is Possession of Meth, residue on a scale.

2 So, in that section are you telling your nephew what
3 charges you're being held for in the jail?

4 A Yes.

5 Q Okay. And that was in January of 1990, is that
6 correct?

7 A (No response)

8 Q You were being held on those charges?

9 A I was being held from January, 1990, to July of
10 1990, yes. I was being held at those months.

11 Q Okay. And then at the bottom it says, but it
12 was -- and then it goes --

13 A But it was Procane.

14 Q Procane. I didn't understand what it was. What
15 is Procane?

16 A It was an over the counter drug they sell.

17 Q Okay. So that would lead you to believe, then,
18 that that would be something that would be legal for you to
19 possess, is that correct?

20 A That's right.

21 Q Now, in the the next section you state -- well,
22 the next section basically you're making a statement. Why
23 don't you go ahead and just read that sentence and then I'll
24 ask you a question about it? At the top of the second page.
25 Read the first sentence.

1 A "Fuck all that rat shit. The people taking it
2 had better look in the mirror."

3 Q And keep going because I think the way I read it
4 that would be just part of the sentence?

5 A "Because I have the State Police giving me
6 people that have given my name up and didn't want me to
7 publish." I had no list, but that's the point you're
8 getting at. No, I did not have a list of people. I just
9 had names that were given to me that people said this and
10 people said that. I was high-siding, you know.

11 Q Okay. Uh-huh. And who -- but you were actually
12 -- who were you actually giving that information about, the
13 list of names from?

14 A I had no list. I was just going by names that
15 they had said that people -- this person said this or that
16 person said this.

17 Q Okay. Who is "they?"

18 A The State Police.

19 Q And then moving on to the next statement, again,
20 it's hard to read your handwriting. Go ahead and read the
21 next sentence and then I'll ask you a question about that?

22 A Do you want me to read the whole letter?

23 Q At this point, I'm having trouble reading your
24 handwriting there.

25 A "They want me to testify against Frank Gable on

1 the Michael Francke case. They need my testimony to make
2 the rat. Gable was paid by the -- who was paid by the
3 Keizer Police to rat, so, what do I do?"

4 Q Okay?

5 A "Fry a rat or what."

6 Q Okay. So, when you say "Keizer," what word
7 comes after Keizer?

8 A (No response)

9 Q You use --

10 A "Pigs."

11 Q Okay. Not the word "police?"

12 A Excuse me.

13 Q So, what did you -- when you were -- so
14 basically you were posing a question to your nephew as to
15 whether or not you should fry the rat, Frank Gable, is that
16 correct?

17 A No. I was putting a statement as whether or not
18 I should testify or not.

19 Q I see. And that phrase "fry a rat" which is
20 just kind of a figure of speech then?

21 A Yeah.

22 Q Now, the next -- let's move on to the next page.
23 And at the top of that page, why don't you go ahead and read
24 that first sentence?

25 A "They're offering me freedom and cash if I

1 testify." The cash I was referring to was the reward money
2 that was offered at the time for information leading to the
3 arrest and conviction of the murderer of Michael Francke.

4 Q And who would "they" be?

5 A (No response)

6 Q I mean --

7 A I was high-siding. It could have meant anybody.

8 Q Okay. So, basically when you stated "They're
9 offering me freedom and cash if I testify," that was
10 certainly something you were at least thinking about, is
11 that correct?

12 A I was blowing smoke up my nephew's ass to try to
13 justify my having to come here and testify against somebody
14 because it's against what I believe in.

15 Q Now, in the next sentence you state, "What would
16 you do? Let a rat walk and do time yourself or fry a rat
17 and go free to walk the streets --"

18 A "Without a tail."

19 Q "Without a tail." What does that phrase,
20 "without a tail," mean?

21 A It's just a figure of speech. I couldn't tell
22 you the frame of mind I was in at the time I wrote this. I
23 really couldn't tell you. Like I told you, I just was
24 high-siding in a letter to my nephew trying to justify
25 having to testify.

1 Q And of course we're not trying to find out
2 exactly what frame of mind you were in, but let's go back to
3 that phrase, "without a tail." Isn't it true that is kind
4 of street slang for walking the streets without any criminal
5 charges hanging over you?

6 (Mr. Harden belched)

7 A Yeah. You could say that. Without any
8 probation or anything, which I have.

9 Q Okay. Now, at the bottom you state, "I'll get
10 them one at a time anyway, on the streets or in here. It
11 makes no difference to me." Who are you thinking of
12 getting?

13 A I think if you read ahead of that that may
14 clarify that statement. I'm not sure. Let me read it. I
15 think it's referring to people talking about me as a rat and
16 me telling them line them up and prove it.

17 Q Tell them --

18 A I think it says line it up and I'll prove it,
19 fight them. It's referring to the people that ratted on me,
20 saying I was a rat.

21 Q Okay.

22 A I think that's what it's referring to. If you
23 read it closely, that's what it is.

24 Q What you're saying is that you would be getting
25 the people that ratted on you for being a rat, is that

1 correct?

2 A That don't make no sense what you just said.

3 Q Okay. Let me -- it's one of those kind of

4 double phrases in a sentence so maybe I confused you.

5 A Do you want me to tell you what it means to me?

6 What I said in the letter at that point?

7 Q Yeah?

8 A I was telling him that I would get everybody --

9 the people that had ratted on me and were calling me a rat,
10 yes.

11 Q Okay. That's --

12 A Since then, I have not. Don't even associate
13 with them type people any more.

14 Q Kind of had a change of heart since then?

15 A No. A change of lifestyle you might call it.

16 I'm clean and sober now.

17 Q At least since March of 1991?

18 A Everyone messes up now and again.

19 Q And then you signed it, "Your uncle, the red
20 rider." Is that like your nickname?

21 A Another nickname I had, yeah.

22 Q And then it goes, "P/S, let me know where your
23 dad is, I have a ten gauge message for him."

24 A Yes.

25 Q Did you -- "P/S, let me know where your dad is,

1 I have a ten gauge message for him," what does that mean?

2 A Obviously what it said. At the time?

3 Q Well, yeah. At the time, what did you mean at
4 the time?

5 A That I had a ten gauge message for him.

6 Q What --

7 A As in a ten gauge shotgun.

8 Q I see. So, it's kind of a --

9 A In other words, I don't like his dad I think is
10 what it's saying, yes.

11 Q I see. And then, at the end, then, after that
12 then you signed it, "Shorty." And then you go, "I'm keeping
13 the family name, they have me in max."

14 A Max.

15 Q So what does that word, "max," mean?

16 A Maximum security for write-ups. I had
17 thirty-two major write-ups while I was in there.

18 Q What is a write-up? Would you describe that to
19 the jury, what a write-up is?

20 A You get wrote up for conduct. You know,
21 disorderly conduct, not doing what they tell you to do or
22 this and that.

23 Q Mr. Harden, back when you were using drugs
24 before January 17th of 1989, how did you use them?

25 A I feel that's my own business.

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1 Q Did you inject the drugs?

2 A I still say that's my own business, how I used
3 them.

4 Q Your Honor, I would ask that the witness be
5 instructed to answer the question.

6 THE COURT: Mr. Harden, you were asked a
7 question and nobody over here has objected to it. You need
8 to answer it.

9 THE WITNESS: Yeah, I did intravenously, yes.

10 MR. STORKEL: Okay. And about how much were you
11 using when you injected those drugs?

12 THE WITNESS: Each time?

13 MR. STORKEL: At that time? Yeah, each time?

14 A About a quarter gram.

15 Q That is all of the questions I have at this
16 point, Your Honor.

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REDIRECT EXAMINATION

BY MR. BOSTWICK: Mr. Harden, have you had any agreements with the District Attorney's office in regards to any charges arising out of the homicide of Michael Francke?

A No, I have not.

Q You don't have any charges pending at this time, do you, Mr. Harden?

A No, I do not.

Q Would you say you were reluctant to tell the State Police you were at the scene of a murder?

A Yes, I was.

Q You were reluctant to testify about it? Don't you --

A Yes, I don't like being here today.

Q Thank you, Mr. Harden.

That is all I have.

1 THE COURT: Do you guys want this letter?

2 One second.

3 MR. STORKEL: Mr. Harden, have you received a
4 subpoena from the defense?

5 MR. HARDEN: Defense?

6 MR. STORKEL: Yes?

7 MR. HARDEN: Yes.

8 MR. STORKEL: Your Honor, I would just ask that
9 Mr. Harden be instructed that he remain available to come in
10 on that subpoena. We will be happy to contact him through
11 the District Attorney's office.

12 MS. MOORE: Your Honor, he can also contact him
13 through his lawyer, Mr. Jensen.

14 MR. HARDEN: Through my attorney.

15 MR. STORKEL: Or through his attorney.

16 THE COURT: His attorney is here in the
17 courtroom. Does the subpoena tell him what day and time to
18 be here?

19 MR. STORKEL: Yes.

20 MR. HARDEN: Yes.

21 THE COURT: Unless you're instructed some other
22 time, you should be here when the subpoenas tell you.

23 MR. HARDEN: Unless I'm told here not to be here
24 on the 7th, be here on the 7th, is that right?

25 MR. STORKEL: That's correct.

1 MR. HARDEN: Sure.

2 THE COURT: You may step down.

3 MR. HARDEN: Thank you.

4 MR. BOSTWICK: We have no further witnesses this
5 afternoon, Your Honor.

6 THE COURT: Pardon me?

7 MR. STORKEL: This is a housekeeping matter, 605
8 was admitted, is that correct?

9 THE COURT: I'm sorry?

10 MR. STORKEL: Exhibit 605 is admitted, was it
11 not?

12 THE COURT: Yes, it was.

13 We're in recess until tomorrow morning, nine o'clock.
14 8:55, please.

15 (Jury out) 5:05

16 MR. BOSTWICK: Thank you, Your Honor.

17 (Proceedings concluded) 5:05

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DIRECT EXAMINATION

BY MR. ABEL: Officer Seeley, just for the record, will you state your present employment?

A I'm a deputy sheriff with the Marion County Sheriff's Office.

Q Were you so employed on February 23rd, 1990?

A Yes, I was.

Q And on that particular date did you have occasion to act as a transport officer for an inmate?

A Yes, I did.

Q And was that inmate at the Marion County jail?

A Yes, he was.

Q What was the inmate's name?

A Cappie Harden.

Q What was the purpose of the transportation?

A We were taking Mr. Harden to the, I believe Northbank Surgical Center to have a minor surgery done on his right hand.

Q Was that surgery performed?

A There was a surgery done, yes.

Q And was Mr. Harden put to sleep to perform that surgery, do you recall?

A He was under anesthesia. I'm not sure put-to-sleep is the proper terminology.

1 Q Were you with him immediately following the
2 surgery and up until the time that he became talkative
3 again?

4 A Yes. Right after the surgery he was brought out
5 into a small recovery area and we stayed with him and then
6 took him back to the Marion County jail right after he was
7 able to leave.

8 Q Did Mr. Harden make any statements to you during
9 that period of time or just make general statements to
10 anybody?

11 A He made general statements. Mostly, he was
12 talking to the nurses. He was talking to us a little bit.
13 He complained -- I believe he said something about being
14 cold. He also wanted to go to the bathroom, and he made a
15 few other general statements.

16 Q And one of those statements was that he would be
17 getting out as soon as he had hung a murder rap on Gable?

18 A I believe the statement was more along the lines
19 -- he was talking to a nurse at the time and I overheard it,
20 and he said, "I'm out of here as soon as I hang a murder rap
21 on Frank Gable."

22 Q Okay. So, it's a little bit different than your
23 letter -- would you like to look at this, again?

24 A Sure. Could I please?

25 Q Here is the first page, too. Sorry.

1 A I believe the statement's on this page. I
2 believe this is fairly accurate, but it was in the context
3 of him saying to the nurse, I'm out of here as soon as I
4 have hung or as soon as I hang a murder rap on Frank Gable.

5 Q Have you had any other contact with Cappie
6 Harden?

7 A Not subsequent to that time. There was a
8 previous contact when I had actually taken him to the doctor
9 and he had the condition with his hand diagnosed by the
10 doctor, told him what was wrong with his hand.

11 Q Did he make any statements to you at that time?

12 A No, he did not.

13 Q Did you ever hear him call himself the state's
14 million dollar baby?

15 A No. I don't recall him ever saying that.

16 Q That is all I have. Thank you.

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CROSS EXAMINATION

BY MS. MOORE: Deputy Seeley, now, at the time of this surgery was Mr. Harden placed under anesthesia?

A Yes, he was. He was under a general anesthesia which caused him to be unconscious.

Q Okay. You anticipated my next question. So, he was unconscious at the time of the surgery?

A I assume so. I was not present during the surgery.

Q At the time that he is brought back into the recovery room, were you present in the recovery room?

A Yes, I was.

Q And what was his state of consciousness when he was wheeled back into the recovery room?

A He was regaining consciousness at that time.

Q And could you describe to the jury basically how you observed his state of consciousness as he was regaining consciousness?

A Well, it was just basically that he was regaining consciousness. He became a little more aware of his surroundings as time went on. He just became more and more aware of what was going on. I would describe him as groggy or he would appear to be, you know, intoxicated looking, if you can relate it to that.

1 Q At that point in time would you say that
2 Mr. Harden was under the influence of the anesthesia that he
3 had been administered for the surgery?

4 A I would say yes he probably was for some period
5 of time while he was regaining consciousness.

6 Q Was he while he was in the recovery room -- you
7 indicated that he indicated he was cold and he had to go to
8 the bathroom, did he complain of any pain at that time?

9 A Yes. His hand hurt, obviously. He just had
10 surgery on the hand and he told the nurse that his hand
11 hurt.

12 Q Okay. And if I might, this letter that Mr. Abel
13 just referred to you, on the second page a couple lines up
14 from the end, is it an accurate statement where you stated
15 "When he was brought into the recovery room and was
16 regaining consciousness, he made a few rambling incoherent
17 comments?"

18 A That would be correct, yes.

19 Q Okay. And then the next sentence that
20 immediately follows a few rambling incoherent comments, you
21 indicated one of the things I did understand him to say
22 besides wanting to urinate and complaining of the pain in
23 his hand would -- was that he would be getting out as soon
24 as he hung a murder rap on Gable. Is that all
25 contemporaneous with him as he is regaining consciousness?

1 A Yes, it is.

2 Q At the time that you heard him make that
3 particular statement, do you have an opinion as to whether
4 he was or was not under the influence of the anesthesia?

5 MR. ABEL: Your Honor, I would object. I don't
6 think he is qualified to state an opinion as to that
7 particular matter.

8 MS. MOORE: Your Honor, Deputy Seeley is a
9 police officer with the Marion County Sheriff's Office that
10 has arrested and dealt with numerous individuals that are
11 under the influence of intoxicants. That is part of his
12 job, and if he has an opinion as to whether this man was
13 under the influence of a drug at the time that he makes this
14 statement, I think that goes directly to the content of the
15 statement.

16 THE COURT: I don't think it would require an
17 expert. In any event, I'll let him answer the question.

18 MS. MOORE: Thank you, Your Honor.

19 THE WITNESS: I would say he was still in the
20 process of regaining consciousness and he was probably still
21 feeling the affects of whatever anesthesia they had used on
22 him.

23 MS. MOORE: At the time that he made that
24 statement?

25 A Yes. And if I can add to it, I believe the

1 doctor told us he would be groggy for a few minutes until he
2 could leave.

3 Q Okay. Thank you, Deputy Seeley.

4 I have nothing further of this witness.

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REDIRECT EXAMINATION

BY MR. ABEL: Officer Seeley, how many times have you transported, arrested or whatever other individuals that are under the influence of some kind of drug, medication so forth, numerous?

A Are we talking about prescribed medication or are we talking about --

Q Any kind?

A Street drugs.

Q Any kind of medication or drug?

A Well, I have been employed with the Sheriff's Office for -- in a couple weeks it will be ten years. Most of that time patrol. I have arrested -- I don't know how many people that I suspected of being under the influence of intoxicants and they were later proved to be under the influence of intoxicants. I have dealt with people multiple occasions that have been under the influence of one type of drugs or another, but specifically under the influence of medically prescribed anesthesia, not a great number. I would say just -- in the hundreds.

Q When --

A Easily in the hundreds.

Q When you talk about these hundreds of people that you have arrested that are under the influence of

1 something, is it not correct that often times people say
2 things under the influence of some kind of a drug that they
3 wouldn't normally say?

4 A I think I understand the question, and if it's
5 whether they say things to me that, if they were not under
6 the influence. That they would prefer not to say to me,
7 that is true.

8 Q Thank you. That is all I have.

9 MS. MOORE: I have nothing further.

10 THE COURT: You may step down.

11 MR. ABEL: May Officer Seeley be excused?

12 MR. BOSTWICK: No objection, Your Honor.

13 MS. MOORE: Yes.

14 THE COURT: You're excused.

15 THE WITNESS: Thank you.
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1 MR. ABEL: Your Honor, I have one more witness.

2 THE COURT: Okay.

3 MR. ABEL: Your Honor, the defense calls Viki
4 Boyd.

5 MS. MOORE: Your Honor, may counsel approach the
6 bench?

7 THE COURT: Okay. Why don't you wait right
8 there one second.

9 (All counsel at the bench)

10 THE COURT: If you would come forward, please.
11 Come right up here to the witness stand, you need to be
12 sworn before you testify. So, if you would please remain
13 standing, raise your right hand, this lady right over here
14 is going to give you an oath.

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VIKI JEAN BOYD

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please.

MR. ABEL: We may have a problem.

(Mr. Abel and Ms. Moore at the bench)

(All counsel up at the bench)

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: Viki Jean Boyd, B-O-Y-D.

THE COURT REPORTER: Will you spell your first
name, too, please?

THE WITNESS: Viki is spelled V-I-K-I.

PATRICK RAY BOGGS

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please, sir.

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: My name is Patrick Ray Boggs.
Last name is spelled, B-O-G-G-S.

DIRECT EXAMINATION

BY MR. ABEL: Good afternoon, Mr. Boggs. First I would like to ask you, do you have a criminal record?

A Yes, sir, I do.

Q And have you been incarcerated in the Marion County jail as a result of a criminal act?

A Yes, sir.

Q Could you briefly tell the jury what your criminal record, and I'm talking about convictions, consists of?

A Burglary, Assault I, Negotiating a Bad Check. I guess that's about it.

Q Do you happen to know an individual called Cappie or Shorty Harden?

A Yes, sir, I do.

Q How long have you known Mr. Harden?

A I have known Shorty for about five years, six years now.

Q Is it correct that in 1990, shortly after April of 1990, you had a conversation with Mr. Harden?

A Yes, sir, it is.

Q Where did that conversation take place?

A On Iberis Street in North Salem in the bedroom of my home.

1 Q And during the course of that conversation, was
2 the Michael Francke homicide mentioned?

3 A Yes, it was.

4 Q And who mentioned it?

5 A Well, I -- I'm the one that brought it up, I
6 guess.

7 Q You were talking to Shorty Harden, is that
8 right?

9 A Yeah, Shorty.

10 Q And could you tell the jury, please, what
11 transpired during that conversation? What Mr. Harden told
12 you?

13 A Do I use the words we said in there or -- that's
14 a lot of cuss words.

15 Q You just tell the jury as close as you can
16 remember what transpired, what Mr. Harden told you?

17 A Okay. I asked Shorty, you know, why? You know,
18 what he is doing. And he says, man, I don't even know.
19 It's a, you know -- I told him he had been involved in the
20 drug trade for a long time now, you know, he knew there was
21 a chance he had to take and everything, and said he didn't
22 even know what the hell went on that night, supposed to be
23 there when Frank --

24 Q Go ahead. Did he talk to you about his
25 testimony against Frank or his statements regarding Frank

1 Gable?

2 A Yes, he did. I'm just doing what they told me
3 to do, he says. My ass, you know, my ass is on the line.
4 And I said, I told him I couldn't believe he was doing what
5 he was doing. And he said, man, I don't even know why I'm
6 doing it. And then -- go on?

7 Q Was that -- the statements that you have just
8 attributed to Mr. Harden, was that following your question
9 about why he was lying to the State Police?

10 A Yes.

11 Q Okay. And you asked him that question directly?

12 A Yes, I did.

13 Q And then he responded, and go ahead and go
14 through his response to that question?

15 A God, let's see. He said I'm just doing what --
16 I'm just doing what they're having me do, he said. I don't
17 even know what the hell went on, he said, but my ass is on
18 the line, you know, and I stand to make some money out of
19 this deal.

20 Q And this conversation took place in April or May
21 of 1990, is that correct?

22 A Yes. I believe it had to be late April around
23 -- somewhere around like the 28th, 29th, 30th, something
24 like that.

25 Q And what is the reason that you can tie in that

1 close as far as a date is concerned?

2 A Because I was re-arrested for Exconvict in
3 Possession of a Firearm on May 11th, and it was
4 approximately two weeks before that date.

5 Q Okay. Thank you.

6 I have no further questions.
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CROSS EXAMINATION

BY MR. BOSTWICK: Was Mr. Harden in custody at that time?

A Was Mr. Harden in custody?

Q Yeah?

A No, sir. He was not.

Q Where did this conversation allegedly take place?

A It took place on 3929 Iberis Street.

Q And how did you and Mr. Harden happen to be there at that time and place?

A Well, me and Shorty had some problems. He owed me some money and I was driving north on Lancaster, past the street Ibex, and I seen Shorty's Iroc sitting there at a friend's house, another mutual friend of ours called Sam, and I pulled -- turned my truck around and went back to Sam's house. And that's why I seen Shorty there, and I told him I wanted to talk to him at my house.

Q Whose house are you talking about, Paul Sand?

A No. His name is Sam Harmon.

Q Sam Harmon?

A Yes.

Q You indicated Mr. Harden owed you some money?

A Yes, I did.

1 Q Do you remember giving a statement to the -- a
2 defense investigator in this particular case on November
3 9th, 1990?

4 A (No response)

5 Q Do you remember giving a statement to a defense
6 investigator?

7 A A defense --

8 Q Was it a man or a woman?

9 A (No response)

10 Q Do you recall giving a statement when you were
11 in jail on November 9th, 1990, to a defense investigator?

12 A Oh, yes, sir. I did speak to an investigator in
13 jail.

14 Q Do you remember -- do you know whether it was a
15 man or a woman?

16 A It was a man.

17 Q Do you know his name?

18 A No, but I spoke to him in the hall just a minute
19 ago.

20 Q Did he tell you his name then?

21 A No.

22 Q Is he in the courtroom?

23 A I don't see him down there.

24 Q Did he ever go back and show you a statement
25 that he gave -- that he took from you?

1 A Yes. And I disagreed with some of it.

2 Q So, he came out in November and took a statement
3 from you, he subsequently went back and talked to you,
4 showed you the statement, and you disagreed with some of the
5 things that you had allegedly told him in November?

6 A Yes.

7 Q Did he change those?

8 A I don't know.

9 Q All right. Well, the statement I have is about
10 an interview that they conducted with you November 9, 1990.
11 Frankly, I don't know who took the statement, Mr. Boggs, but
12 it indicates that you were upset with Shorty Harden because
13 you were arrested November, 1989. In essence, you indicate
14 that Mr. Harden set you up, and that's why -- you believe
15 Mr. Harden owes you three hundred and fifty bucks?

16 A Well --

17 Q Is that what happened? Is that what you
18 believe?

19 A Well, Mr. Harden did turn me in to the Salem
20 Police Department. Yes, he did.

21 Q Do you know that for a fact?

22 A Well, the officers said a real good friend you
23 got, you know, right after my arrest. And I said are you
24 speaking about Shorty? And he just kind of smiled and went
25 -- shrugging like that.

1 Q So you were pretty upset with Mr. Harden because
2 you believe he is the one that turned you in to the state or
3 the Salem Police Department, and that's why you got
4 arrested?

5 A Well, I'm not really upset with him anymore, you
6 know. At the time I was, yes.

7 Q But you're not anymore?

8 A No.

9 Q Did you ever get your three hundred and fifty
10 bucks?

11 A No.

12 Q Do you know the defendant?

13 A Frank?

14 Q Yes. Frank Gable?

15 A I know Frank.

16 Q How long have you known him?

17 A Personally, we were running around, going around
18 the same crowd for about three years, something like that.
19 Personally, just knowing him from jail, you know.

20 Q Okay. One of these -- you indicated

21 A He was over -- I was over at the penitentiary,
22 too, with him.

23 Q Okay. You have also been convicted of Escape,
24 haven't you, Mr. Boggs?

25 A Yes, sir. I walked off.

1 Q Okay.

2 Q Do you know what a snitch is, Mr. Boggs?

3 A Sure.

4 Q What is a snitch?

5 A Somebody that tells on other people.

6 Q What do you think about snitching?

7 A I kind of got nothing against them, you know, or
8 for them, you know. I just -- they're out there.

9 Q What happens to snitches at the penitentiary,
10 Mr. Boggs?

11 A Well they usually get beat up and stuff.

12 Q They don't have a very good reputation, do they?

13 A No.

14 Q Thank you, Mr. Boggs.

15 That's all I have.

16 MR. ABEL: No further questions, Your Honor.

17 THE COURT: You may step down.

18 MR. ABEL: May this gentleman be excused?

19 THE COURT: May he be excused?

20 MR. BOSTWICK: No objection, Your Honor.

21 THE COURT: You may step down. You are excused.

22 That means you may leave us.

23 THE WITNESS: Okay. Thank you, sir.

24 MR. ABEL: Thank you.

25 Your Honor, the defense would call Jerry Paul Baker.

DWAYNE CHRISTIANSEN

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please, sir.

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: Dwayne Emero Christiansen,
C-H-R-I-S-T-I-A-N-S-E-N.

DIRECT EXAMINATION

BY MR. ABEL: Good afternoon, Mr. Christiansen.

A Good afternoon.

Q First let's start with -- you're presently incarcerated, is that correct?

A Yes, I am. At OCI.

Q And obviously then you have a criminal history, criminal convictions, could you please tell the jury what your criminal convictions are?

A I have two prior burglaries, four prior forgeries, and a prior UUMV and a prior Theft I.

Q Mr. Christiansen, did you -- were you incarcerated in the Marion County jail during the month of June, 1990?

A Yes, I was.

Q And do you remember coming in contact with a Cappie Shorty Harden?

A Yes, I do.

Q Do you recall approximate dates when you were in the same area in the jail as Cappie Harden?

A It was towards the end -- towards the latter part of June, of '90.

Q And were you in the same cell or in the same --

A I was moved from segregation in to the same pod

1 as Mr. Harden was, and as I entered the pod I asked where he
2 was because I had never met the man before and I says to
3 him, so, you're Shorty. And he answered me with a yes, and
4 I says -- I asked him why he was doing this to Frank.

5 Q Would you explain that to the jury please? Why
6 he is doing what?

7 A I asked why he was trying to hang something on
8 Frank. Something that was not even anything in his concern
9 really. And he told me for the simple fact is, he was
10 telling on Frank before Frank would tell on him. And I
11 asked what he meant by that, and he said, well, I do things
12 out on the streets that Frank has been known to do, too, and
13 I'm afraid that he would tell on me, so I told on him first.
14 And then he also stated that he was the million dollar baby,
15 and I asked him what he meant by that, and he said that he
16 was going to receive money for telling on Frank, too. And I
17 says, well, that's not a very good reason to be lying about
18 something.

19 Q Did he say anything to you about whether or not
20 Frank Gable had any knowledge of the murder?

21 A He said that Frank didn't know anything about
22 it. That -- he told me that he was just telling -- telling
23 them all of this stuff so that Frank wouldn't tell on him.
24 They were trying to get Frank out of the way. And I don't
25 know who "they" is.

1 Q He never elaborated on that at all?

2 A No, not really. He just stated that he was the
3 million dollar baby and he was going to get money for
4 telling on Frank.

5 Q Thank you.

6 That is all I have of this witness, Your Honor.

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CROSS EXAMINATION

BY MR. BOSTWICK: Do you know Frank Gable?

A I never met Frank Gable until I entered the county jail and they brought him in, in April of 1990. And I have seen him, and I says, so, they brought him down here and they have arraigned him, and that's the most -- and then I occasionally talked to him in the pod that I was in with him, but never discussed his case.

Q When did you talk to Mr. Harden in the jail?

A At the latter part of June. I was moved from the trustee pod into segregation and from segregation I was moved into the same pod as Mr. Harden was.

Q That was after Mr. Gable was indicted and, therefore, after Mr. Harden testified at Grand Jury?

A Yeah.

Q Okay. What happens to -- do you know what a snitch is?

A Yeah. I know what a snitch is.

Q What happens to snitches?

A Well, usually when a person tells on another person, the person that he -- gets told on usually retaliates in some way.

Q Isn't it true that if you are an inmate at the -- in an institution, and someone finds out that maybe you

1 have testified against another individual, that can cause
2 you repercussions? Cause you trouble?

3 A In any other state, but Oregon.

4 Q Doesn't -- that doesn't happen in Oregon?

5 A Nope.

6 Q There is no retaliation in Oregon?

7 A Once in a while, but very seldom.

8 Q Have you ever been in the Oregon State
9 Penitentiary, OSCI?

10 A I have been at OCI. That's where I am presently
11 incarcerated.

12 Q There has never been any retaliation to your
13 knowledge at the Oregon State Corrections?

14 A Like I said, once in a while there is, but very
15 seldom. I mean, they all walk the yard as -- all of the
16 snitches as the people that molest children or rape women,
17 they all walk the yard, also.

18 Q Isn't it true that people are reluctant to admit
19 that they have testified against someone else?

20 A Yes.

21 Q They try to downplay it and try to rationalize
22 it?

23 A Yes.

24 Q Don't want to admit it to anybody?

25 A Yes.

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1 Q Isn't it true, Mr. Christiansen, you have also
2 been convicted of being an Exconvict in Possession of a
3 Weapon?

4 A Of a firearm, yes. That seemed to slip my mind.
5 It was in '85.

6 Q Thank you, Mr. Christiansen.

7 That is all I have.

8 A You're welcome.

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REDIRECT EXAMINATION

BY MR. ABEL: Is it correct that shortly after your conversation with Cappie Harden, he left the jail?

A Cappie Harden did leave the jail about a week after my conversation with him. He was interviewed with the drug program from Portland and he was accepted by the drug program, which I found very astonishing.

Q Why is that?

A Because being charged with what he is being charged with and going to a drug program, I mean, if the average person would have walked in there or the average person that has been in trouble with his prior record, like, if I had his prior record and went into the court, I would have been sentenced to prison time, not just a drug program and then released out on the streets after completing a drug program.

Q Thank you.

That is all I have.

RE CROSS EXAMINATION

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3 BY MR. BOSTWICK: Mr. Christiansen, wasn't
4 Mr. Harden in jail on a drug charge?

5 A As to him saying that to me, yes, he was on a
6 possession charge.

7 Q Wasn't Mr. Harden sentenced to the drug program
8 or allowed to go to the drug program by the Judge?

9 A Yes.

10 Q Did you know he completed that program and
11 submitted proof to the Judge that sentenced him?

12 A Yes. And by phone conversations that I have had
13 with people on the streets, his -- I don't know if it's
14 right for me to bring it up, but I have talked to people on
15 the street and he isn't doing very well out there right now.

16 Q What do you mean very well out there? He is
17 still on probation, isn't he? He still has a probation
18 officer, doesn't he?

19 A True. But he is -- never mind.

20 Q Have you talked to his probation officer?

21 A No.

22 Q Talked to the Judge that sentenced him who has
23 him on probation?

24 A I have talked to people that have bought drugs
25 from him in the past.

E. R.-667

Dwayne Christians - ReC -

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1 Q Have you talked to the Judge? Have you talked
2 to his probation officer?

3 A No.

4 Q Are you aware that he is taking regular UA's?

5 A Yes. I'm aware that he is taking regular UA's.

6 Q Okay. Are you aware of the fact that he passed
7 his most recent UA?

8 A Yes. I'm aware of the fact that he passed his
9 most recent one.

10 Q Thank you, Mr. Christiansen.

11 No further questions.

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REDIRECT EXAMINATION

BY MR. ABEL: These people that you have been talking to, are they telling you that they are buying drugs from Cappie Harden just --

A The person that I talked to is one of Cappie Harden's ex-girlfriends and she is living with a friend of mine. And I talked to her just as of two weeks ago.

MR. BOSTWICK: Your Honor, objection. It is hearsay.

MR. ABEL: He asked nothing but hearsay for the last five minutes.

MR. BOSTWICK: I still object to it, Your Honor.

MS. MOORE: If he wants to bring his girlfriend.

MR. BOSTWICK: Let's bring the girlfriend in.

THE COURT: I'll sustain the objection.

MS. MOORE: Thank you, Your Honor.

MR. BOSTWICK: Thank you, Your Honor.

MR. ABEL: That is all I have.

Thank you, Your Honor.

THE COURT: Anything else?

MR. BOSTWICK: I have nothing further.

THE COURT: You may step down.

MR. STORKEL: At this time the defense would call Adam Hernandez.

1 THE COURT: Mr. Hernandez, if you would come up
2 here, please.

3 And if you would please remain standing, raise your
4 right hand, this lady is going to give you an oath before
5 you testify.

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ADAM MANUEL HERNANDEZ

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please, sir.

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: Adam Manuel Hernandez,
H-E-R-N-A-N-D-E-Z.

E. R. -671

Adam Manuel Hernandez - D -

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DIRECT EXAMINATION

BY MR. STORKE: Good afternoon, Mr. Hernandez.

A Good afternoon.

Q Are you currently incarcerated?

A Yes, sir, I am.

Q And where are you incarcerated at?

A Oregon, OCI, Oregon Corrections Institution.

Q Okay. And what criminal convictions do you have
at this time?

A Possession of Methamphetamine, Possession of
Cocaine, Violation of Parole.

MS. MOORE: I'm sorry?

MR. STORKE: What was that last thing?

THE WITNESS: Violation of parole.

MR. STORKE: Okay. You know Shorty Harden?

A Yes, I do.

Q Do you know Jodie Swearingen?

A Yes, sir. I do.

Q On January 17th, 1989, did you ever give Jodie
Swearingen a ride from Dundee, Oregon, to Salem, Oregon?

A No, sir. I did not.

Q Do you have an opinion regarding Cappie Harden's
reputation for truthfulness or untruthfulness?

A I think he is a liar and a fat mouth.

1 Q What do you mean by a fat mouth?

2 A Well, he likes to BS a lot. Say things about
3 nothing he knows nothing about.

4 Q That is all of the questions I have at this
5 time.

6 Thank you.

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CROSS EXAMINATION

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3 BY MR. BOSTWICK: How do know Mr. Harden,
4 Mr. Hernandez?

5 A I met him while I was going through a separation
6 with my wife. He was affiliated with another fellow selling
7 methamphetamine.

8 Q So you met him through the methamphetamine
9 business?

10 A Actually, no. But, we had some affiliations
11 after -- after I met him.

12 Q When did you meet Mr. Harden?

13 A I met Mr. Harden -- it must have been, let's
14 see, around '87.

15 Q You associated with Mr. Harden from 1987 through
16 1989, 1990?

17 A Sure.

18 Q Did you use to run errands for Mr. Harden?

19 A No. Never ran no errands for Mr. Harden.

20 Q Never did any business for Mr. Harden?

21 A I used to work on his cars for him.

22 Q You used to work on his cars, never ran any
23 errands for him. Run any dope for him, pick people up for
24 him?

25 A I'm not in that business. I'm not in that

1 business.

2 Q Pardon me?

3 A I'm not in that business.

4 Q I know you're not in that business right now,
5 but were you in that business 1987, 1988 and 1989?

6 A Never was in that kind of business. Never was
7 in that kind of business.

8 Q Never were involved in that business. How did
9 you get your convictions, the possession of controlled
10 substance, Mr. Hernandez?

11 A I used to be a dope addict.

12 Q How did you get arrested? Wrong place at the
13 wrong time?

14 A You might say so.

15 Q Thank you, Mr. Hernandez.

16 That is all I have.

17 MR. STORKEL: Nothing further, Your Honor.

18 THE COURT: You may step down.

19 MR. STORKEL: May this witness be excused?

20 MR. BOSTWICK: We have no objection.

21 THE COURT: You are excused, Mr. Hernandez.

22 THE WITNESS: Thank you.

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KENNETH JOHN BEELER

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please, sir.

THE CLERK: Would you state your full name and
spell your last name, please?

THE WITNESS: Kenneth John Beeler, B-E-E-L-E-R.

DIRECT EXAMINATION

BY MR. ABEL: Good afternoon, Mr. Beeler.

First thing I want to talk to you about is your prior criminal history. You do have a prior criminal history, don't you?

A Yes, I do.

Q Maybe people can hear me if I have this. And could you briefly tell the jury what your prior criminal convictions consist of?

A Burglary, Driving While Suspended, Car Theft, Harassment, Trespassing.

Q And have you been incarcerated in the Oregon penal system?

A Yes, I have.

Q In June of 1989, were you incarcerated in Marion County jail?

A Yes, I was.

Q And at that time, were you in a jail pod with Cappie Shorty Harden?

A Not at that time I wasn't.

Q Okay. Were you subsequently in a jail pod with Cappie Harden?

A Yes, I was.

Q And what date was that?

1 A It was like February of '90.

2 Q 1990?

3 A (Nodding in the affirmative)

4 Q Okay. Did you have occasion to talk to Cappie
5 Harden about things surrounding the Michael Francke
6 homicide?

7 A Yes.

8 Q And did you specifically talk to him about his
9 involvement in the case?

10 A Yes.

11 Q Did he talk to you about things surrounding the
12 charges against Frank Gable?

13 A Yeah.

14 Q Okay. Could you generally tell the jury please
15 some of the things you talked about and some of the things
16 he told you about his involvement in the investigation and in
17 the Michael Francke murder case?

18 A Basically what he was telling me was that --
19 well, everything he told me changed like from minute to
20 minute. We were in the hole in Marion County jail together
21 for five days so all we had for entertainment was
22 conversation, but he was talking to me about the cases
23 pending against him. There was like five or six or seven of
24 them, that he had to help on the Michael Francke case or
25 else they were going to hammer him on the cases that were

1 pending against him. He showed me letters in reference to
2 calling him the million dollar baby. He was always talking
3 about references to there was reward money that he was going
4 to get, and he was going to be able to split it with like
5 seven other people. Stuff like that. Movie royalties and
6 that kind of thing.

7 Q So if I understand you correctly, he is saying
8 that it was his understanding that the Michael Francke
9 reward fund was going to be split up between eight people,
10 is that right?

11 A I thought it was seven.

12 Q Including himself, eight?

13 A Yeah.

14 Q Now you indicated that when he talked to you he
15 changed his story frequently?

16 A Regularly. I mean, he would talk to me -- we
17 were in four cells in a straight line so we couldn't see
18 each other, but he would talk to me through the cracks in
19 the doors and he would tell me something, I would turn
20 around and read for a while and I would be on my bunk
21 reading and he would be talking down to a dude down in the
22 next cell, he would be telling him the same thing he was
23 telling me but it would be twisted and turned around with
24 pieces missing and added pieces to it. And it was just
25 generally -- we would even ask him, come right out blunt and

1 ask him, you know, that ain't what you told me just five
2 minutes ago. He said, well, this is the way it is, you
3 know. I mean, like every hour it was -- there was always
4 twists and turns in his words, you know. It was always
5 changing.

6 Q Did he ever tell you he was at the scene at the
7 time of the murder?

8 A Yeah, he did.

9 Q Did he ever tell you that he wasn't at the scene
10 at the time of the murder?

11 A Yes, did he.

12 Q Your answer was yes?

13 A Yes.

14 Q And as far as other people at the scene, did he
15 ever mention anybody else that he said was at the scene at
16 the time of the murder?

17 A Yeah. He mentioned that him and Jodie were
18 there together at one time and then it was just him and then
19 it was neither one of them were there. So --

20 Q Is this something that over a five day period it
21 was a continuing story that changed repeatedly?

22 A Yeah. This was, at that point in time, it was
23 still new. He had just come to jail, refused to go into
24 population because of the Francke homicide. So he was kept
25 in the hole because he wouldn't go to population, general

1 population, and so we talked about -- he was going out on
2 tours with detectives or police during that period of time,
3 he would be gone for like six or eight hours out on the
4 town, driving the town, having lunch or whatever, he would
5 come back and tell us all kinds of things, you know. So
6 that was one of the highlights of our conversation was the
7 Michael Francke incident.

8 Q Okay. Did he ever discuss any specifics of the
9 things he was doing when he was out around town on these
10 tours?

11 A Well, he said they had lunch. They gave him
12 cigarettes. And I'm sure he did, I don't -- I hit a blank.

13 Q While you were there in the hole, did anybody
14 take you out, feed you lunch?

15 A No.

16 Q Buy you cigarettes?

17 A No.

18 Q Can you think of anything else when he would
19 come back from these little tours that he told you?

20 A Just that he was all -- he was always real
21 pumped up afterwards.

22 Q Do you happen to know when he left Marion County
23 jail? Were you there?

24 A No. I was returned to OCI, I think.

25 Q Okay. That is all I have. Thank you.

CROSS EXAMINATION

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2
3 BY MR. BOSTWICK: Mr. Beeler, during this period
4 of time it was right after Mr. Harden had been arrested in
5 January of 1990?

6 A I guess. If that's when he was arrested, yeah,
7 I was in the hole with him in February, I believe.

8 Q So that was during the period of time that he
9 was being interviewed by the detectives involved in
10 investigating the Michael Francke homicide?

11 A True.

12 Q Okay. And you and other inmates were aware that
13 he was being taken out various days of the week talking to
14 the detectives about the Michael Francke homicide?

15 A The people inside the hole. There was four
16 cells, if I remember right, four cells inside the hole and
17 we were in a -- there is more cells in the hole, but there
18 is like four cells that are inside the glass partition
19 divided off from the rest of the hall and the four cells in
20 there knew what was going on, yeah.

21 Q You knew he was being brought out and being
22 interviewed by the detectives involved in the Michael
23 Francke homicide?

24 Q That's what he was telling us, yes.

25 Q Isn't it a fact -- okay. What is a snitch?

1 A Excuse me?

2 Q What is a snitch?

3 A Someone who gives up evidence to police
4 officers.

5 Q What happens to snitches?

6 A They're not treated as well as the rest of the
7 general population.

8 Q It's somebody that tells on other individuals,
9 telling about their participation in a crime?

10 A True.

11 Q It's not looked upon too kindly by the other
12 inmates, is it?

13 A No.

14 Q It's difficult for them to come back and tell
15 you that they have been talking to the cops about someone
16 else's participation in a particular crime, isn't it?

17 A Well, it depends on the situation and the
18 person, I suppose.

19 Q Would you say it would be hard if you went back
20 to the institution and somebody found out that you had been
21 telling the cops about someone else's participation in a
22 criminal act?

23 A I couldn't do it.

24 Q Pardon?

25 A I couldn't do it.

1 Q You couldn't do it because it would be difficult
2 for you, wouldn't it?

3 A Yeah.

4 Q Isn't it a fact you have also been convicted of
5 Robbery?

6 A Robbery III. Yes, it is.

7 Q Thank you, Mr. Beeler.

8 That is all I have.

9 MR. ABEL: No further questions, Your Honor.

10 THE COURT: You may step down, Mr. Beeler.

11 MR. ABEL: Your Honor, the defense calls Greg
12 Johnson. Greg Johnson.

13 THE COURT: Mr. Abel, I didn't hear you request
14 Mr. Beeler to be excused. Do you wish him to be excused?

15 MR. ABEL: Yes, please.

16 THE COURT: Mr. Bostwick?

17 MS. MOORE: State has no objection.

18 THE COURT: Mr. Johnson, if you would come
19 forward please, we need to have you come right up here if
20 you would. And if you would please remain standing and
21 raise your right hand, this lady will give you an oath to
22 tell the truth today.

23

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DENNIS DEAN GAUSE

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please, sir.

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: Dennis Dean Gause, G-A-U-S-E.

DIRECT EXAMINATION

BY MR. ABEL: Good afternoon, Mr. Gause.

Were you a resident of Salem in January of 1989?

A Uh-huh. Yeah.

Q Is it true that you were residing with a young lady?

A Yes.

Q And what is that young lady's name?

A Shelli Thomas.

Q What was the address that the two of you lived at? Do you recall?

A 14 something, corner of Hines and 14th.

Q Hines and 14th?

A Yeah. It has been a long time.

Q How long had you been residing there in January of '89?

A One month.

Q Is it correct that at sometime during the month of January you took a trip to California?

A Yes.

Q Do you recall when that was?

A About six o'clock in the morning, January 16th, I believe. I think that's what it was.

Q And when did you return from California?

1 A I think around March 15th.

2 Q March 15th?

3 A Yes. The end of March, somewhere around there.

4 Q And when you returned to -- in March, did you
5 move back into that same house?

6 A Yes, I did.

7 Q And you were still living with Shelli Thomas?

8 A Kind of.

9 Q Did you during this period of time have occasion
10 to met Frank Gable?

11 A Yes.

12 Q And could you tell the jury, please, how and
13 when you met Frank Gable?

14 A I think it was right after I got back from
15 California. I can't remember how many days or whatever, but
16 it was within the same month. And he came over to the house
17 one night while I was there.

18 Q Did you meet him on more than one occasion?

19 A Yes. After that, yeah.

20 Q Daily or --

21 A Well, depends. Sometimes we wouldn't see each
22 other for a couple weeks and sometimes we would be like all
23 of the time.

24 Q Did you continue to reside in the same house
25 with Shelli Thomas during this period of time?

1 A We didn't actually live together then. I mean,
2 after I came back from California we were -- like when I
3 wasn't there, she would be there. When I was there, she
4 wouldn't be there. It was like --

5 Q So did you subsequently move out of the house on
6 Hine Street?

7 A Yes.

8 Q And when was that?

9 A I believe it was in May.

10 Q Okay. Of nineteen --

11 A '89.

12 Q '89. Where did you move to at that time?

13 A Yeah. Pardon me?

14 Q Where did you move to at that time?

15 A '69 Firebird car.

16 Q What?

17 A My car.

18 Q You were living out of a car?

19 A Yes.

20 Q Is it correct that later on you got arrested for
21 something?

22 A Yes.

23 Q And were you placed in the Marion County jail?

24 A Yes. September of '89.

25 Q Okay. At the time you were in the Marion County

1 jail, was Cappie Harden also in jail?

2 A Yeah. He came in a month or two before I got
3 out, before I went to OSP.

4 Q Which would be approximately when, then?

5 A I think around December.

6 Q Of '89?

7 A Right.

8 Q And did Mr. Harden have any conversations with
9 you pertaining to the Michael Francke homicide?

10 A Yeah.

11 Q Do you know whether or not or were you present
12 when he had conversations with other people inside the
13 Marion County jail?

14 A Yeah. He was my next door neighbor.

15 Q Can you tell the jury, please, of any
16 conversations you overheard Mr. Harden talking to anybody
17 else and who those people might be in the Marion County
18 jail?

19 A Well, Kenny Beeler, myself, just about anybody
20 that came in there, you know, he was --

21 Q How about --

22 A It was -- we were in the hole the whole time.

23 Q How about Bill Storm? Is that a fellow that was
24 in there?

25 A Bill Storm? Me and him were in C pod before I

1 was sent to the hole. I was in general population and then
2 I got in trouble and to the hole. To the best of my
3 knowledge, they never had contact because when Cappie got
4 ready to go, when he got classified, he more or less rolled
5 himself up to the hole.

6 Q During this period of time, did you have
7 occasion to talk to Cappie Harden about his testimony
8 implicating Frank Gable?

9 A From the day he came in.

10 Q What was his -- could you tell us a little bit
11 about how -- about the conversations, who started the
12 conversations?

13 A Well, we were neighbors for months. I mean, you
14 know, I can't remember if he came in December or January,
15 but I left in March, so he was only there a couple months,
16 but like from the first time he came in he started saying
17 that, you know, he -- he got arrested, somebody turned him
18 in, he got arrested and they gave him a polygraph -- is that
19 a polygraph, they gave him that.

20 Q We'll get off -- let's get on --

21 A That's how the conversation basically started.

22 Q So just go on with the conversation.

23 A He said that he had some -- the State Police
24 were accusing him of knowing something about the Michael
25 Francke thing, which --

1 Q Did he talk to you at all about what he was
2 saying about Frank Gable and Frank Gable's involvement?

3 A Yeah. Well, the first story was that he kind of
4 gave Frank and Jodie a ride. They were hanging out together
5 and they went over to the Dome Building to do something and
6 Frank and Jodie got out -- Frank and Jodie got out, Jodie
7 came back, Frank came running back and Shorty was supposed
8 to give him a ride and dumped him off somewhere, he couldn't
9 remember where he dumped him off. He had to tell him where
10 he dumped him off at or he was going to get in trouble.

11 Q That was the one story. What was the next story
12 you heard?

13 A Well, after he told me that story, you know, I
14 asked him if he knew anything about it and he told me no,
15 but he said he had to do something because he failed the
16 polygraph test. So I told him if he told them that story
17 and you didn't report nothing, you know, you're an
18 accessory. So --

19 Q And so at that point --

20 A The story changed.

21 Q Then what was his story?

22 A That he got a call from Jodie Swearingen or got
23 a call from somebody or for some reason he happened to go to
24 the Dome Building and he seen Frank did it and stuff. And
25 he was still saying that he gave Frank a ride. I was

1 telling him that was a part, you know, you couldn't say that
2 because you helped him get away from the scene of a crime,
3 you know.

4 Q So, did he -- I believe you testified just a few
5 moments ago that -- that he said he knew nothing about the
6 actual crime, is that right?

7 A Yeah. When I asked him when we -- when we first
8 started discussing it and stuff, and he said that the
9 polygraph --

10 Q Let's not talk about the polygraph.

11 A Well, it's pretty much -- I have to at this time
12 because that's why he kept on falling back, that's why he
13 was telling --

14 Q But he continuously changed the story?

15 A Yes. Yeah.

16 Q And later on during the course of -- during the
17 time that you were in the jail, were -- did you and others
18 cook up some plans for trying to get reduced time and so
19 forth?

20 A Bill Storm and I tried to run a scam on them
21 because they kept telling us we knew something about it.
22 They gave us tests, and --

23 Q Just go on with the scam?

24 A Okay. Well, they kept accusing us of having
25 knowledge of it.

1 Q Uh-huh.

2 A So I told Bill, you want to get out? And he
3 said yeah. And I said here is what we'll do, I already pled
4 guilty in September so I had six months to do no matter
5 what, so I told him I'll tell them that I know somebody that
6 will tell on Frank, you know, that heard Frank say that he
7 killed him. And then, when they call you, you get -- you
8 know, tell them yeah, if they give you immunity, but -- if
9 they let you out on your OR or drop charges on you, that you
10 will testify. And I'll be like a hostage, you know, I'll be
11 the one that has to get up on the stand and say, yeah, I
12 heard Bill tell me that Frank did it and I was to make sure
13 Bill told the right story, you know, or I wasn't getting out
14 of jail anyway. Well, they didn't believe us, you know, and
15 they wouldn't let Bill out on his OR to testify. So, we --
16 you know, we kind of more or less cut and scratched.

17 Q Was there any other people involved in this
18 so-called scam to try to get reduced time or get out of
19 jail?

20 A Just about everyone that got arrested.

21 Q Okay.

22 A Tried something, you know.

23 Q And you subsequently -- I believe said you went
24 to OSCI, is that right?

25 A OSP.

1 Q OSP. Okay. Did you personally know anything
2 about the Michael Francke homicide?

3 A No. I didn't even know anything about the death
4 until the state -- after I had already pled guilty and was
5 in jail for a month or two. The State Police came and
6 contacted me. I didn't know who Michael Francke was or
7 nothing. I didn't know anything about no killing or
8 anything.

9 Q That is all I have.
10 Thank you.

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CROSS EXAMINATION

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3 BY MR. BOSTWICK: Mr. Gause, you indicated you
4 went to California about the 16th of January, 1989?

5 A It's the 15th or the 16th, yes.

6 Q 15 or 16?

7 A The State Police have a note when it was. They
8 have it on record.

9 Q Do you recall -- do you recall making a phone
10 call to your --

11 A To my brother's house.

12 Q Your brother's house in Jefferson?

13 A Yes.

14 Q Because you were lost?

15 A Yes.

16 Q And do you recall making that phone call on the
17 15th?

18 A I don't remember. What I know is it was late at
19 night. So, I don't -- I don't know --

20 Q What was the reason for the phone call to your
21 sister's house?

22 A My sister-in-law's. Well, because I was
23 supposed to meet my brother in Sacramento, supposed to
24 follow them over there to load up some stuff to move to
25 Jefferson. I get lost way out on a country road and I

1 pulled over to the house, the people brought the phone out
2 to me, I called my sister-in-law, she stayed home, and asked
3 her directions to my niece's house where he was at.

4 Q Did you call collect?

5 A I believe so.

6 Q And you were somewhere near the Sacramento area?

7 A Yes. Dallas or something like that right
8 outside of there.

9 Q If the phone -- if the phone records indicate
10 that you made a phone call about 7:54 p.m. on the 15th to
11 your sister's house or your sister-in-law's house, would
12 that be correct?

13 A I have no idea what time it was. I thought it
14 was later than that, but if the phone records state that,
15 then that is right.

16 Q But you recall the phone call?

17 A Yes.

18 Q Okay. Do you recall what date you were arrested
19 in California?

20 A 19th.

21 Q Okay.

22 A I believe it was.

23 Q Okay. Did you call Shelli Thomas after were you
24 arrested in California?

25 A Yes, I did.

1 Q This is January 19th?

2 A I believe so.

3 Q 1989?

4 A I believe so.

5 Q And that's the date you were arrested?

6 A I'm pretty sure. I mean, we have police
7 reports. I mean --

8 Q You didn't call Shelli Thomas until you were
9 arrested, is that correct?

10 A Correct.

11 Q I would like the witness shown what has been
12 marked as state's exhibit number 331.

13 Do you recognize that?

14 A Yes. That's my house.

15 Q That's your house at the corner of 14th and
16 Hines?

17 A (No response)

18 Q At 14th and Hines?

19 A 14th and Hines, yeah.

20 Q Is that where you were living in January --

21 A Yes.

22 Q Of 1989?

23 A Yes. We moved in January 1st.

24 Q Pardon?

25 A Moved in January 1st.

1 Q Okay. You were living there until the 15th and
2 then you went to California?

3 A Right.

4 Q Was Shelli Thomas still living in the house when
5 you went to California?

6 A Not when I left.

7 Q Not when you left? Where was she living?

8 A She was -- all of her stuff was there, but she
9 was staying in her mom's. We were in the middle of
10 splitting up.

11 Q She wasn't there when you left to California?

12 A Not the day I left. She drove by and seen me
13 working on the car the night before.

14 Q Okay.

15 A Or, matter of fact, she came by the night
16 before. Her and Randy Strudle (sic Studer), is that his
17 name? Frank's cousin. He came -- he came by and she came
18 over. After they were there Frank or -- not Frank but Randy
19 and his girlfriend, she came over while they were there
20 before -- before I left.

21 Q But you were fighting with Ms. Thomas during
22 this period of time and she wasn't living with you when you
23 left on the 15th, is that correct?

24 A Pretty much. I mean, she came there to change
25 clothes, took a shower and left. And that's basically all I

1 did.

2 Q You were staying with your mom?

3 A Pardon?

4 Q Was she staying with her mom?

5 A Yes.

6 Q Was she?

7 Q Yes?

8 A That's where she would go if I was there. She
9 would go back over to her mother's.

10 Q Do you recall talking to a defense investigator
11 in the case in December when you were at the Tillamock
12 Forest Camp?

13 A Yes.

14 Q Okay. Do you recall being subpoenaed by the
15 defense?

16 A Yes. And by the prosecution.

17 Q You said something about being subpoenaed by the
18 defense. Do you recall what you said?

19 A Pardon me?

20 Q Do you recall what you said when you found out
21 the subpoena was by a defense investigator?

22 A Pretty much, yeah.

23 Q What did you tell them?

24 A I told them I wasn't saying anything until after
25 I was out of custody.

1 Q Also tell them that you were glad you were going
2 to testify for the defendant?

3 A I might have.

4 Q You didn't want to show them the subpoena if you
5 were going to testify for the prosecution?

6 A No. Because they didn't -- they didn't subpoena
7 me until after I was out of custody.

8 Q Okay. Why wouldn't you want to testify for the
9 prosecution?

10 A Because what we had to say was a lie.

11 Q Okay.

12 A What me, Bill Storm, Cappie Harden all had to
13 say was a lie. It was a scam to get out of jail, to have
14 charges dropped, to be released on our own recog so we could
15 run and take care of the other person's problem while they
16 were locked up.

17 Q What is a snitch?

18 A It's a person that tells on somebody.

19 Q What happens to snitches in the institutions?

20 A In Oregon? Nothing.

21 Q Pardon me?

22 A In Oregon, nothing. Baby rapers, snitches,
23 rapists, anything, it don't matter. They walk the yard.
24 Ain't nothing happens to them. Eighty-five percent of the
25 population is rapers and seventy-five percent of it is rats.

1 Q There is no retaliation in any institution in
2 the State of Oregon whether it be county jail time or
3 institution?

4 A Pardon me?

5 Q In the institution for being a snitch? Nothing
6 happens to snitches in Oregon?

7 A No. There is -- I take it back, occasionally it
8 does happen if the person that got told on runs into the
9 person that told on them, he might beat him up, but you can
10 check your own medical records how many people died in the
11 State of Oregon in a prison system.

12 Q So what you're -- what you've testified to is
13 that you and Mr. Storm worked out a plan to try to scam the
14 State Police into getting a reduced sentence or to --

15 A Trying to get him out of jail.

16 Q Okay. State Police didn't believe him?

17 A They didn't believe either one -- his attorney
18 went to the State Police before. See, I was -- for Bill, I
19 was supposed to go to the State Police and tell them, yeah,
20 Bill Storm knows and then Bill was supposed to act like he
21 didn't want to say nothing but yet, you know, because I knew
22 that they were going to work it out of him, let him out and
23 everything but Bill's attorney jumped the gun and talked to
24 the State Police --

25 Q Tried to make up a story to get a deal, didn't

1 you?

2 A Huh.

3 Q You tried to make up a story to cut a deal,

4 didn't you?

5 A Everyone did.

6 Q Didn't work, did it?

7 A Nope. Except for Cappie Harden.

8 Q They believed Cappie Harden, didn't they?

9 A Huh, because he is the only one that was willing
10 to sign a piece of paper saying that he would testify
11 against Frank Gable.

12 They came to me Friday before I went to OSP, I went on
13 a Monday, State Police came down and brought me down to the
14 State Police Department telling me I didn't have to go to
15 prison, all I had to do was testify against Frank Gable.

16 Q They didn't believe you, did they, Mr. Gause?

17 A No.

18 Q Tried to take steps to check out your story,
19 didn't they, Mr. Gause?

20 A I have no idea.

21 Q Didn't check out --

22 A They're police, they should.

23 Q It didn't check out, did it, Mr. Gause?

24 A No. Because we were lying. How could it check
25 out?

1 Q Thank you, Mr. Gause.

2 That is all I have.

3

4

REDIRECT EXAMINATION

5

6 BY MR. ABEL: Mr. Gause, while you were at the
7 -- while you were incarcerated at the Marion County jail,
8 did you have occasion to come in contact with the fellow
9 named John Kevin Walker?

10 A Yeah.

11 Q Did you have a conversation with John Kevin
12 Walker pertaining to the Michael Francke homicide?

13 A Yes, I did.

14 Q And did you in particular talk to John Kevin
15 Walker about whether or not he would be testifying against
16 Frank Gable?

17 A I asked him if he knew anything about it. If
18 the State Police had questioned him or anything. We were in
19 the middle of going down the hallway.

20 Q What month was that and year?

21 A I can't remember.

22 Q Sometime after September of '89?

23 A Yeah. I was still in custody and he came in
24 right before he got his jaw broke.

25 Q After he what?

1 A Right before he got his jaw broke.

2 Q That was at Oregon State Penitentiary then?

3 A OCI.

4 Q Or OCI. Was it shortly after he got his jaw
5 broke or --

6 A Shortly before.

7 Q Shortly before?

8 A Yeah. I think he got out of custody and then
9 came back.

10 Q Now what did he tell you about his knowledge of
11 the Michael Francke homicide?

12 A He told me, in the hallway, he told me he didn't
13 know nothing about it and he wanted to be left alone, his
14 mother was sick or dying or something, just died, one of the
15 three, and he just wanted to be left alone and he was tired
16 of the police bothering him about it.

17 Q Did -- did Mr. -- going back to Cappie Harden,
18 did he talk to you at all about things that he thought he
19 would get for testifying?

20 A Yeah.

21 Q Like cash or anything?

22 A Yeah.

23 Q What was that?

24 A First of all he was supposed to get bailed out
25 by the Oregonian or something, next thing he was suppose to

1 get thirty thousand dollars for testifying for the
2 conviction of Frank. And between him and Mike Keerins, they
3 thought there was going to be a book and a bunch of stuff
4 that they would get or some kind of rights. That's just
5 what they were -- that's how stupid it got and how out of
6 hand it was getting. They were talking about book rights
7 and everything else calling themselves the million dollar
8 baby. I contacted Shorty's mother and she contacted the
9 State Police for Shorty, Cappie Harden, and all of that.
10 So, I pretty much was side by side with them and everything,
11 so when I got my hour out he would ask me to call his
12 mother, Winney, to have her call the State Police and she
13 told them that he needed special treatment. He used to bang
14 his head on the wall until it bled and tell them -- and act
15 stupid. He told me he was being abused and stuff. And they
16 came and took him on out one day and he was supposed to go
17 out for a hand operation, I think, but then I heard he went
18 to another institution. And then I got a letter from him
19 from another institution, from another jail, I can't
20 remember where, it was -- I think it was Alabny or someplace
21 like that.

22 Q In that --

23 A Linn County, I think.

24 Q You say you got a letter from Cappie Harden?

25 A Right.

1 Q In that letter did he discuss anything about the
2 Michael Francke murder case?

3 A No. Not in the letter because he heard some
4 shit I was saying about him and he kind of wrote me a letter
5 back telling me he was pissed off at me and stuff.

6 Q That is all I have.

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RECROSS EXAMINATION

BY MR. BOSTWICK: John Kevin Walker was, as you say, got his jaw broke after he told the police about Frank Gable's involvment in the Michael Francke homicide?

A Right.

Q Thank you, Mr. Gause.

MR. ABEL: Nothing further, Your Honor.

THE COURT: You may step down, Mr. Gause.

MR. ABEL: May this witness be excused, Your Honor?

THE COURT: State have any objection?

MS. MOORE: No. We have no objection.

THE COURT: Yes. He is excused.

JODIE MAE SWEARINGEN

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please.

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: Jodie Mae Swearingen,
S-W-E-A-R-I-N-G-E-N.

THE COURT: And Ms. Swearingen your attorney,
Mr. McKnight, is seated right there and we're all aware if
you want to talk to him, you just let me know and I'll get
him up here to talk to you.

DIRECT EXAMINATION

BY MR. STORTEL: Ms. Swearingen, are you currently employed?

A No.

Q Where are you currently residing?

A In Marion County Correctional Facility.

Q Why are you there?

A Because the D.A. had put me there since they declared me a material witness.

THE COURT: Can you hear her?

THE JURORS: Yes.

THE COURT: You can. Okay.

MR. STORTEL: And do you have any criminal convictions?

THE WITNESS: No.

MR. STORTEL: How old were you in January of 1989?

A Sixteen.

Q And how old are you now?

A Nineteen.

Q Has your lawyer informed you of the possible consequences if your testify here today?

A Yes.

Q What has he told you that those consequences

1 could be?

2 MS. MOORE: Objection. Hearsay.

3 THE COURT: Sustained.

4 MR. STORKEL: What do you believe that the
5 consequences of your testimony here today could be?

6 THE WITNESS: I could be facing charges of
7 Perjury, Hindering Prosecution, Accessory, Accomplice.

8 MR. STORKEL: Okay. And what do you believe you
9 could potentially receive in terms of imprisonment if you
10 are to testify today?

11 A Five years, five years, twenty years.

12 Q All right. Have you ever testified in court
13 before?

14 A Yes.

15 Q Where did you testify?

16 A In the Grand Jury.

17 Q Where else?

18 A That's it.

19 Q Okay. Do you recall any other proceedings?

20 A My materiality, my hearing.

21 Q Okay. Did you testify in those proceedings?

22 A Once, yeah.

23 Q Okay. Do you know Cappie Harden?

24 A Yes.

25 Q Did you know Cappie Harden when you were sixteen

1 years old?

2 A Yes.

3 Q How well do you know Cappie Harden?

4 A Pretty well.

5 Q And tell us how you know Cappie Harden?

6 A I ran around with him, did drugs with him, had
7 sex with him, did drugs.

8 Q Okay. Did Cappie Harden ever give you any
9 drugs?

10 A Yeah.

11 Q What kind of drugs did he give you?

12 A Methamphetamine.

13 Q Okay. Did that happen on more than one
14 occasion?

15 A Yeah.

16 Q Are you and Cappie Harden part of what you would
17 call a community?

18 A Yeah.

19 Q Do you know the members of that community well?

20 A Yes.

21 Q And have you ever discussed Cappie Harden with
22 members of that community?

23 A Yes.

24 Q And have you ever discussed Cappie Harden's
25 reputation as a truthful or untruthful character with that

1 community?

2 A Yes.

3 Q And what is that reputation that he has for
4 truthfulness or untruthfulness?

5 A Very untruthful.

6 Q Based upon your personal relationship with
7 Cappie Harden, do you have an opinion of your own regarding
8 his character for truthfulness or untruthfulness?

9 A Yes.

10 Q What is your opinion?

11 A Untruthful.

12 Q If you were to hear that Cappie Harden had
13 testified before this jury that you called him from the Dome
14 Building on January 17th, 1989, would that be the truth or a
15 lie?

16 A It would be a lie because there are no public
17 phones.

18 Q Did you call Cappie Harden from the Dome
19 Building on January 17, 1989, so that you could get a ride?

20 A No.

21 Q How do you know that there are no phones at the
22 Dome Building?

23 A Because I took a ride to the Dome Building with
24 police officers and we were looking for public phones.

25 Q And were there any phones that were -- did you

1 see any phones at the Dome Building during that ride?

2 A No.

3 Q What phone was finally settled on as a potential
4 phone that could have been used?

5 A A phone all of the way on 25th and State Street
6 at Plaid Pantry.

7 Q Okay. Did you ever use that phone to call
8 Cappie Harden to come and give you a ride at the Dome
9 Building?

10 A No.

11 Q Were you on the Oregon State Hospital grounds on
12 January 17, 1989?

13 A No.

14 Q Did you see Frank Gable burglarize a car on the
15 Oregon State Hospital grounds on January 17, 1989?

16 A No.

17 Q Did you see Frank Gable stab Michael Francke?

18 A No.

19 Q Did Frank Gable ever tell you that he killed
20 Michael Francke?

21 A No.

22 Q When did you first meet Frank Gable?

23 A In the summer. The summer after, I think, in
24 '89.

25 Q Okay. The summer after Michael Francke was

1 murdered?

2 A Right.

3 Q Do you remember the Grand Jury proceedings?

4 A Yes.

5 Q Were you present at the Grand Jury proceedings?

6 A Yes.

7 Q Was one of the two prosecutors present at the
8 Grand Jury proceedings?

9 A Yes. Sarah Moore.

10 Q Was Cappie Harden present at the Grand Jury
11 proceedings?

12 A No. Not that I seen.

13 Q Okay. Was Cappie Harden present at the Grand
14 Jury prior to the proceedings?

15 A Yes.

16 Q Did you meet with Cappie Harden before meeting
17 -- before going into the Grand Jury?

18 A Yes, I did.

19 Q Where did you meet?

20 A Somewhere in the courthouse. On floor 2-M, I
21 think.

22 Q Wwould that be this courthouse?

23 A Yes.

24 Q What did you meet or what did you do when you
25 and Cappie Harden met here in this courthouse prior to the

1 Grand Jury proceedings?

2 A We held hands, hugged, talked. Mainly just got
3 our stories straight.

4 Q Why was that necessary?

5 A Because I was having problems with saying that I
6 called Shorty and had him come pick me up from the Dome
7 Building.

8 Q And did you and Mr. Harden have a discussion to
9 get your story straight?

10 A Yeah.

11 Q That is all of the questions I have at this
12 point, Your Honor.

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CROSS EXAMINATION

BY MS. MOORE: Good morning, Ms. Swearingen. Do you recall this opportunity that you had to see Cappie Harden prior to going to Grand Jury?

A Yes.

Q Do you recall when it was in relation to the time that you actually testified in Grand Jury?

A Yes. It was before.

Q Do you recall how far before?

A Days.

Q Do you recall who all was present in the room with you and Mr. Harden when this conversation occurred?

A Detective Pierce. And there was one other detective, I can't remember who it was.

Q Okay. Does the name Loren Glover sound familiar?

A Yeah.

Q Was he the other officer that was present in the room?

A Probably, yeah.

Q And isn't it true the two of you were never left alone at any time in that room?

A No, we weren't.

Q And isn't it true that it's a fairly small room

1 that you were in?

2 A Yes.

3 Q And isn't it true that the police officers told
4 you and Mr. Harden that you could not discuss the case?

5 A Yeah.

6 Q And isn't it true that they were there the
7 entire time the two of you were together?

8 A Yes, they were.

9 Q And do you recall the day you came to Grand Jury
10 and testified?

11 A Yes.

12 Q And isn't it true your lawyer was present with
13 you when you came to Grand Jury and testified?

14 A Yeah. Out in a little room.

15 Q Isn't it true that Tom Collins was present --
16 isn't it true that Tom Collins was your lawyer at that point
17 in time?

18 A At that point in time, yes.

19 Q Isn't it true that Tom Collins was present and
20 had an opportunity to speak to you prior to you going in
21 Grand Jury and testifying?

22 A Yeah. Just said good luck.

23 Q Isn't it true that Tom Collins was present
24 outside of the Grand Jury room when you were done
25 testifying, when you left the Grand Jury room?

1 A Yes. He said good-bye.

2 Q Is it true that Tom Collins, in fact,
3 represented you from September of '89 when you were first
4 contacted for an interview regarding your knowledge of the
5 Michael Francke homicide?

6 A Yes.

7 Q And isn't it true that Tom Collins would not
8 allow the district attorney's office to elicit any
9 information from you about your knowledge of the Michael
10 Francke homicide unless and until he negotiated an immunity
11 agreement on your behalf?

12 A Yeah.

13 Q And isn't it true that, in fact, you did not
14 submit to any interviews or did not, in fact, give any
15 information to the District Attorney's office until a letter
16 was signed by myself, yourself, and your lawyer,
17 Mr. Collins, on December 8th, 1989?

18 A No. I was interviewed by police officers before
19 that immunity agreement was --

20 Q Okay.

21 A Signed.

22 Q Let's talk about that. Isn't it true that in
23 September of '89 police officers contacted you and attempted
24 to interview you about your knowledge of the Michael Francke
25 homicide?

1 A Yes.

2 Q And isn't it true that after that first contact
3 with you, that you basically went on the run for about a
4 month?

5 A Right.

6 Q And isn't it true that at the time that you were
7 picked up on your juvenile hold or your juvenile parole
8 hold, isn't it true at that point in time that you advised
9 the officers that arrested you that you were represented by
10 Tom Collins?

11 A Yes, I did right then, but they still
12 interviewed me.

13 Q Isn't it true, Ms. Swearingin, that, in fact,
14 they immediately terminated that conversation with you that
15 night as soon as you indicated that you were represented by
16 Tom Collins?

17 A They still held me in the office.

18 Q Isn't it true that they, in fact, attempted to
19 get a hold of Tom Collins at that point in time that night?

20 A They called my dad.

21 Q Isn't it true they allowed you to talk to your
22 father over the phone that night?

23 A Yes.

24 Q And isn't it true that it was during that month
25 period of time when you were on the run that you, on your

1 own or through your father, went and hired Tom Collins to
2 represent you at that point in time?

3 A Yes.

4 Q And isn't it true that the District Attorney's
5 office negotiated with Mr. Collins from basically September
6 of '89 until December 8th of '89 in an effort to reach an
7 agreement with yourself so that we could interview you about
8 any knowledge you might have on the Michael Francke
9 homicide?

10 A Yes.

11 Q And isn't it true that Mr. Collins and yourself
12 and I executed basically a letter, an immunity letter of
13 agreement on December 8, 1989, prior to your agreeing to
14 talk with us at all about your knowledge of the Michael
15 Francke homicide?

16 A Yes.

17 Q And isn't it true in that letter, basically, we
18 gave you immunity for your conduct -- and I'll just
19 indicate, see if you agree with this as the intent of the
20 letter. "The purpose of this letter is to confirm our
21 agreement regarding the prosecution of your client, Jodie
22 Swearingen, for her conduct on January 17, 1989, with Frank
23 Gable and her observations of Frank Gable's conduct in the
24 Michael Francke homicide."

25 "If it is determined that her conduct constitutes the

1 commission of the crime of Hindering Prosecution, your
2 client will agree to admit to that crime of Hindering
3 Prosecution in juvenile court. The state agrees not to seek
4 remand of this charge to adult court."

5 "The state further agrees to prosecute your client
6 only for Hindering Prosecution in regards to conduct on
7 January 17, 1989, with Frank Gable involving the Michael
8 Francke homicide."

9 "Your client further agrees to testify fully and
10 truthfully in any Grand Jury proceedings, trials, and any
11 other court proceedings regarding the Michael Francke
12 homicide."

13 Does that sound like the letter that we all signed on
14 December 8, 1989?

15 A Yes.

16 Q And isn't it true that you refused to give any
17 interviews or any information to the District Attorney's
18 office about your knowledge of the Frank Gable and Michael
19 Francke homicide unless and until the State of Oregon agreed
20 not to prosecute you as an accessory to the murder, as an
21 accomplice to the murder of Michael Francke? Isn't that
22 true?

23 A Yes.

24 Q Ms. Swearingen, let me take you back to late
25 1988 early January of '89, do you know two individuals by

1 the name of Kelly Bender and John Bender?

2 A Yes.

3 Q Okay. And were those individuals people that
4 you frequented and considered to be friends in late '88,
5 early '89?

6 A Yes.

7 Q And were there occasions when, in fact, you
8 would go to their residence and basically crash or stay with
9 them for a lack of somewhere else to stay?

10 A Yes.

11 Q And are you familiar with where that house was
12 located, where the Benders lived?

13 A Yes.

14 Q Okay. And was that house located on Hyacinth
15 Street?

16 A Yes.

17 Q Okay. And during this period of time when you
18 knew John and Kelly Bender, did you also know Cappie Harden
19 during that period of time?

20 A Yes.

21 Q Did you know during that period of time whether
22 Cappie Harden would frequent or come over to the Benders
23 residence?

24 A Yes.

25 Q And do you recall specifically in January of '89

1 being released from Rosemont School up in Portland?

2 A Yes.

3 Q Okay. Do you recall basically who picked you up
4 on that day?

5 A Yeah.

6 Q And who picked you up?

7 A My dad.

8 Q Okay. And where, initially, after you got
9 released from Rosemont School, where did you go initially to
10 live or stay?

11 A My dad's.

12 Q Okay. And did you stay there very long?

13 A No.

14 Q Okay. What did you finally do to get out of
15 your dad's and take off?

16 A The 17th.

17 Q Okay. January 17th, 1989?

18 A Yeah.

19 Q And you had been out just about a few days prior
20 to that, is that correct?

21 A Yes.

22 Q Did you make some phone calls on January 17th,
23 1989, in an effort to get out of your dad's house?

24 A Yes.

25 Q And where did your dad live at that point in

1 time?

2 A Dundee.

3 Q Dundee, Oregon?

4 A Yes.

5 Q And where were you trying to get to on January
6 17, 1989?

7 A Salem.

8 Q So, do you recall who you called in an effort to
9 get out of Dundee and down to Salem?

10 A Yeah.

11 Q Who did you call?

12 A Shorty.

13 Q And is that Cappie Harden?

14 A Yes.

15 Q Okay. And do you recall making those phone
16 calls from your dad's phone up in Dundee?

17 A Yes.

18 Q And do you recall about what time of day it was
19 that you made those phone calls?

20 A About.

21 Q Approximately what time of day was it?

22 A Around eleven to three o'clock, four o'clock.

23 Q Okay. And if the phone records indicated that
24 -- well, who did you call?

25 A Over to the Hyacinth house.

1 Q Okay. And if the phone records indicated that
2 the phone calls were made at 11:35 a.m., 11:55 a.m., and
3 12:26 p.m., right around the noontime hour, would you have
4 any problem with that?

5 A No.

6 Q Did you eventually get down to the Benders house
7 that day?

8 A That night.

9 Q That night. Okay. What was your relationship
10 with the Benders during that period of time?

11 A They're acquaintances. I knew them. I went
12 over there and I crashed sometimes. Sometimes I would go
13 over there for something to do.

14 Q Okay. Were there during this period of time,
15 late '88, early January of '89 and specifically this period
16 of time when you left Dundee and came to Salem, were there
17 lots of people that lived in that house during that period
18 of time?

19 A There were lots of people around there.

20 Q Okay. Lots of people coming and going from that
21 house all of the time?

22 A Yeah.

23 Q A lot of drug trading going on or drug dealing
24 going on back and forth at that house?

25 A I don't know other peoples' business, but I knew

1 there was a lot of people.

2 Q Okay. You never observed what all of these
3 people that were coming and going were doing when they were
4 coming and going?

5 A No.

6 Q During this period of time that you knew Cappie
7 Harden were you ever -- did you go anywhere with him in a
8 car, ever?

9 A Yeah.

10 Q What kind of a car did he have during that
11 period of time?

12 A A Mustang, Chevelle, a van.

13 Q Ever know him to work on his cars?

14 A Yeah.

15 Q Okay. Ever work on his cars at the Benders
16 house?

17 A Yes.

18 Q Do you recall the night of January 17, 1989,
19 making a phone call to someone from the Benders house?

20 A Yes.

21 Q Okay. Do you remember who it was you made that
22 phone call to?

23 A Yes.

24 Q What is his name?

25 A Dan Anderson.

1 Q Okay. Do you recall what time you made that
2 telephone call?

3 A Close to eight.

4 Q Okay. If the phone records indicate that that
5 phone call was made at 8:55 p.m. from the Benders house,
6 would you have any quarrel with that?

7 A No.

8 Q Ms. Swearingin, during this period of time in
9 late '88, early '89, did you, yourself, use drugs?

10 A Yes.

11 Q And what kind of drugs were you using during
12 that period of time?

13 A Methamphetamines.

14 Q How would you use methamphetamines?

15 A Intravenously.

16 Q You would inject it in your arms?

17 A Yes.

18 Q Okay. When did you start using drugs?

19 A I don't know. When I was fourteen.

20 Q Okay. And were you still living at home at age
21 fourteen?

22 A Off and on.

23 Q Okay. And when it was off or on, when you
24 weren't living at home, where were you living?

25 A Wherever.

1 Q Okay. And what is "wherever?"

2 A Wherever. Salem, Vancouver.

3 Q In late -- well, why don't we say late '88,
4 early '89, when you left Dundee and came to Salem you were
5 headed to the Benders, is that correct?

6 A Yes.

7 Q And then the Benders were the kind of friends
8 that would just let you crash, is that right?

9 A Yes.

10 Q Show up one day, spend the night, leave the next
11 day, right?

12 A Yes.

13 Q Isn't it true that that is pretty much how
14 you've lived since age fourteen?

15 A Yeah.

16 Q Basically, whoever would take you in, whoever
17 has drugs, that's where you are that particular night, is
18 that correct?

19 A Yep.

20 Q Would you describe yourself as an outlaw,
21 Ms. Swearingin?

22 A Outlaw? I guess if you want to say that.

23 Q Have you ever --

24 A I don't obey the law.

25 Q Have you ever described yourself as an outlaw?

1 A I guess it depends on what everybody's opinion
2 of an outlaw is. I just don't obey the law.

3 Q Okay. Do you basically run around with people
4 that you describe as outlaws?

5 A Yeah.

6 Q Okay. And do you kind of like idolize the
7 people that you're running around with that you consider to
8 be outlaws?

9 A If they're someone special, yeah.

10 Q Okay. And since age fourteen you have been into
11 methamphetamines, is that correct?

12 A Yes.

13 Q And the majority of the people that you run
14 around with since age fourteen are methamphetamine users or
15 dealers?

16 A Some are, some aren't.

17 Q Okay. Is another term for them cranksters?

18 A Yeah.

19 Q Is that crowd of people important to you,
20 Ms. Swearingen?

21 A A little. I mean, important, what do you mean
22 by important?

23 Q That is basically how you have survived on the
24 streets for the last five years?

25 A Yeah.

1 Q And you rely on them to a certain extent to take
2 care of you, isn't that true?

3 A Yeah.

4 Q And when you first got out, when you first
5 started running with this crowd at age fourteen, isn't it
6 true you told me that basically that they thought you were
7 cute and you were special and they took care of you and
8 things were okay when you first started running with them at
9 age fourteen, isn't that true?

10 A Yeah.

11 Q And isn't it true as you got older and older you
12 felt like maybe things weren't so special anymore and you
13 had to make it on your own and make your own way out on the
14 streets, is that true?

15 A Yeah.

16 Q And isn't it true that this crankster crowd,
17 they don't look kindly on people that cooperate with the
18 police or the District Attorney's office or anyone they
19 consider to be the system of law enforcement, is that true?

20 A Some of them.

21 Q And isn't it true that you have told people
22 basically that you have nothing good to say about district
23 attorneys or law enforcement people?

24 A Yeah.

25 Q In terms of their role in the justice system?

1 A Right.

2 Q Do you recall being interviewed by the defense
3 on a number of occasions after you were brought back to
4 Oregon?

5 A Yeah.

6 Q Okay.

7 A Oh, what? Wait a minute. Wait a minute, excuse
8 me. What was that question, again?

9 Q Do you recall being interviewed by the defense
10 on a number of occasions about your knowledge --

11 A Yes.

12 Q In this case? Nine or ten interviews, does that
13 sound about right?

14 A Yeah.

15 Q Okay. Do you recall talking to them about your
16 attitudes towards Shorty or Cappie Harden?

17 A Yeah.

18 Q Okay. And do you recall telling them on October
19 29th, 1990, that basically -- and I'll just use the language
20 you used on the interview that -- you're talking about
21 Shorty and you said, "He fucked me off really bad. I never
22 really hardly ever talked to him after that." Do you feel
23 that Shorty at some point in time did you wrong or "fucked
24 you off" as you told the defense investigator?

25 A Yeah.

1 Q And do you recall in this same interview with
2 the defense investigator talking about an interview you had
3 with a gentleman by the name of Gary Jensen out at the
4 Hillcrest School?

5 A Yes.

6 Q And do you recall them asking basically -- I
7 think Mr. Jensen had indicated that Jodie knew that Frank
8 Gable killed Michael Francke. Frank Gable and Jodie
9 Swearingen were there, and Frank Gable was hired to kill
10 Michael Francke. Do you recall telling Gary Jensen that?

11 A Yes. I did recall telling him that. Another
12 lie.

13 Q Okay. And Gary Jensen understood that Jodie was
14 not involved but was nearby, possibly in a car. Do you
15 recall telling Gary Jensen that?

16 A Yeah. Another lie.

17 Q And was that -- did that conversation with Gary
18 Jensen occur approximately sometime in October of 1989?

19 A Probably.

20 Q And do you recall telling the investigator
21 basically on October 29th, 1990, a year later when this
22 interview is being conducted in regards to the conversation
23 you had with Gary Jensen, I just wanted to tell different
24 stories so nobody would believe me. Do you recall telling
25 him that?

1 A Yes.

2 Q On October 31st of 1990, the defense interviewed
3 you again and they talked to you about an individual by the
4 name of Patrick Haldeman. Do you know who Patrick Haldeman
5 is?

6 A Yes.

7 Q Do you recall talking to the defense
8 investigator about basically when you met Frank Gable in
9 relationship to your knowledge of Patrick Haldeman?

10 A Yes.

11 Q Okay. And I think you testified earlier today
12 that you thought you met Frank Gable in the summer of '89,
13 but isn't it true that you acknowledged to the defense
14 investigator that you might have actually met Frank Gable at
15 a time at Patrick Haldeman's earlier than the summer of '89?

16 A I seen him.

17 Q Okay. What does "seen him" mean?

18 A Driving into the parking lot, parking, going
19 inside the house. I never had conversation with him.

20 Q Okay. Okay. But you had actually met Frank
21 Gable in early 1989 according to the statement you made to
22 the defense, is that correct?

23 A Could have been.

24 Q Ms. Swearingin, do you know a person by the name
25 of Marie Collar?

1 A Yes.

2 Q Okay. Isn't it true she is an individual that
3 works out at Hillcrest when you were housed out at
4 Hillcrest?

5 A Yes.

6 Q Okay. And do you recall having a conversation
7 with Marie Collar about the Michael Francke homicide?

8 A Could have.

9 Q Could have?

10 A Uh-huh.

11 Q Do you recall specifically, again, in October of
12 '89, talking to Marie and advising her that you had
13 something to do with the Michael Francke homicide case? Do
14 you recall telling her that?

15 A Yeah. A lie.

16 Q And do you recall talking to an Ann Marie
17 Hagemann out at Hillcrest?

18 A Yes.

19 Q Okay. And again in September or October of '89,
20 do you recall having a conversation with Ms. Hagemann about
21 the Michael Francke case?

22 A Yes.

23 Q And do you recall telling -- specifically it
24 would appear that this conversation occurred on October
25 25th, 1989, about two o'clock in the afternoon. Do you

1 recall having this conversation; Jodie told her that they
2 were at the house where Michael Francke got killed. Jodie
3 advised she was standing on the grass about fifty feet away
4 from the car, and that the car door was ajar. She inferred
5 there were two guys at the scene, plus Michael Francke.
6 Jodie told her that they were by the open car door and that
7 Michael Francke and an individual were scuffling when
8 Michael Francke fell on the ground. Jodie told her that the
9 guy turned around with a bloody knife in his hand and Jodie
10 didn't see him use the knife. Jodie advised after the guy
11 turned around with the bloody knife in his hand, they split.

12 Do you recall having that conversation with Ann Marie
13 Hagemann?

14 A Yes. Another lie.

15 Q And do you recall talking to a Laura Marie
16 Vorderstraffe at Hillcrest School?

17 A Don't know who that is.

18 Q Okay. Do you recall having a conversation with
19 -- do you recall the night you were arrested by the police
20 after you had taken off for a month and were on the run?

21 A Yes.

22 Q Do you recall a woman coming to pick you up at
23 JDH and transporting you back to Hillcrest that night?

24 A Yes.

25 Q Okay. Did you know the name of the woman that

1 did that transport?

2 A Laura.

3 Q Okay. Laura Vorderstraffe?

4 A I don't know her last name.

5 Q Okay. But a woman named Laura came and picked
6 you up at JDH that night and took you back to Hillcrest, do
7 you recall that?

8 A Yes.

9 Q Do you recall having a conversation with Laura
10 that night when she took you back to Hillcrest this night?

11 A Yes.

12 Q And do you recall basically telling Laura that,
13 boy, I'm really nervous this time?

14 A Yeah.

15 Q And do you recall telling her you were nervous
16 because you were either an accomplice or an accessory to a
17 murder?

18 A Yeah. Just another one of those lies.

19 Q Okay. And do you recall basically after Laura
20 got you to Hillcrest talking to Mr. Jensen, Gary Jensen when
21 you got to Hillcrest?

22 A Yeah.

23 Q And do you recall getting upset with Mr. Jensen?

24 A I probably did.

25 Q And do you recall basically yelling at

1 Mr. Jensen and saying, "No, no, Mr. Jensen. That's not
2 fair. You don't understand. This time I'm in as an
3 accomplice for murder." Do you recall telling Mr. Jensen
4 that, that night?

5 A Probably did.

6 Q And do you recall a few days later talking to
7 Laura, again, about this incident?

8 A Could have.

9 Q And telling her basically that the murder
10 happened in Salem and that Michael Francke was the murder
11 victim?

12 A Yeah. Another lie.

13 Q And then do you recall an individual by the name
14 of George Russel Talley?

15 A Yes.

16 Q Okay. Isn't it true Mr. Talley is the
17 individual that basically let you stay with him when you
18 were on the run and out of state?

19 A Yes.

20 Q Okay. And do you recall talking to him -- now
21 what state are we in at this point, Ms. Swearingen?

22 A Colorado.

23 Q Okay. Is Mr. Talley a friend?

24 A Yes.

25 Q And are we talking now September of '90?

1 A Yes.

2 Q Is that correct?

3 A Yes.

4 Q And was Mr. Talley aware that you were on the
5 run basically from the authorities in the State of Oregon at
6 this period of time?

7 A No.

8 Q Okay. Did Mr. Talley know you were a material
9 witness to a homicide in Oregon at this period of time?

10 A No. I never really explained anything to him.

11 Q Okay. Was Mr. Talley basically a friend?

12 A Yeah.

13 Q Mr. Talley take you in and give you a place to
14 live?

15 A Yep.

16 Q Mr. Talley threaten you in any way?

17 A No.

18 Q Did -- Mr. Talley was basically taking care of
19 you, right?

20 A Yes.

21 Q Do you recall telling Mr. Talley basically that
22 some hot shot got killed and you witnessed it?

23 A Yes.

24 Q And, Ms. Swearingin, do you recall the very
25 first interview you had with the defense, September 14th of

1 1990?

2 A Yeah.

3 Q Okay. And do you recall basically during the
4 course of that interview talking about whether you had seen
5 anything or seen anything happen at the Dome Building?

6 A Yeah.

7 Q Okay. And do you recall during the course of
8 that interview basically telling the defense investigator
9 that you had enough and you just wanted to be left alone and
10 you didn't want to testify? Do you recall telling them
11 that?

12 A Yes. Among other things.

13 Q Okay. You had had enough and you wanted to be
14 just left alone, is that correct?

15 A Yeah.

16 Q Thank you, Ms. Swearingen.

17 I have nothing further.
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1 MR. STORKEL: Ms. Swearingen, how long have you
2 been held in jail as a material witness?

3 A Since September.

4 Q Have you been off drugs since that time?

5 A Yes.

6 Q Did you get off of drugs cold turkey? Did you
7 get off of them when you got to jail, did you quit using
8 drugs?

9 A Before I was in jail, I wasn't using.

10 Q Okay. Are you testifying today to be -- to
11 avoid being a snitch?

12 A No.

13 Q Why are you testifying today?

14 A Because I'm telling the truth today.

15 Q Okay. Did you meet with the police regarding
16 this case?

17 A Yeah.

18 Q How many times did you meet with them?

19 A I can't remember.

20 Q More than ten times?

21 A Yes.

22 Q More than twenty times?

23 A Yes.

24 Q More than thirty times?

25 A Yes.

1 Q More than forty times?

2 A Yeah.

3 Q Did you meet with the police prior to talking to
4 -- did some of these police meetings happen prior to when
5 you talked to these other people that Ms. Moore was
6 questioning you about?

7 A Excuse me?

8 Q Did you meet with the police -- when was the
9 first time that you recall meeting with the police?

10 A In the summer.

11 Q What year was that when you met with them?

12 A '89.

13 Q Okay. Can you describe the first time you met
14 with the police in September of 1989?

15 A I was on pain medication. I was really sick.

16 Q Where were you at?

17 A In Dundee, Oregon. At my dad's.

18 Q Okay. What time of day was it when you met with
19 them?

20 A Sometime in the afternoon.

21 Q Okay. What were you doing before the police
22 came?

23 A Sleeping.

24 Q How were you dressed?

25 A In shorts and a tank top.

1 Q Okay. How did you feel?

2 A Sick.

3 Q Why was that?

4 A Because I had just got through being rushed into
5 emergency for a bladder infection.

6 Q Okay. And what -- how did you know that or what
7 -- did you hear anything or how did you begin your meeting
8 with the police? How did you know that they were there?

9 A Well, how did I know that they were there or how
10 did I know they were going to come?

11 Q How did you know that they were going to come?

12 A My PO. My juvenile PO said -- called up and I
13 just happened to answer the phone and he said, well, look,
14 these detectives want to talk to you. And I didn't know
15 what for, and he said he didn't know what for, but it was
16 something big, and as long as I stayed there and waited for
17 the detectives, they wouldn't arrest me and bring me back to
18 Hillcrest and I could continue on parole and I would be
19 terminated soon. If I ran, the cops would hunt me down and
20 arrest me and I would stay in Hillcrest.

21 Q Did he tell you that you had to cooperate with
22 the police?

23 A Yes.

24 Q What did you -- how did you know that the police
25 had arrived at your dad's house?

1 A Because they knocked on the door. I heard them
2 going down the driveway.

3 Q Okay. What did you see when you opened the
4 door?

5 A Two large police officers.

6 Q How big were they?

7 A Larger than me.

8 Q How did you feel when you saw the two police
9 officers?

10 A Scared. Trapped.

11 Q Did they have guns?

12 A Yes.

13 Q What did the police officer say?

14 A Well, they said their name and then I just kind
15 of let them in and we sat down and we just started talking.

16 Q Okay. What did your parole officer tell you
17 would happen if you didn't cooperate with them?

18 A That I would end up -- the police would end up
19 looking for me and I would be in some serious trouble.

20 Q What did you think that cooperate meant?

21 A Meant to listen to what they had to say, and
22 said whatever they wanted to hear.

23 Q Okay. Did the police give you any indication of
24 what they wanted to hear?

25 A Yeah.

1 Q What did they indicate that they wanted to hear?

2 A Well, about the Michael Francke murder and Frank
3 Gable.

4 Q Okay. At this first police interview, did you
5 tell the police that you saw Frank Gable kill Michael
6 Francke?

7 A No.

8 Q At this first interview did you tell the police
9 that Frank Gable confessed to killing Michael Francke?

10 A No.

11 Q After the first interview at any point, did you
12 tell the police that you saw Frank Gable kill Michael
13 Francke?

14 A Yes.

15 Q What motivated you to tell the police that
16 story?

17 A Well, the police were telling me that or
18 suggesting to me that they knew that I had seen something
19 and people had been saying that I seen something and that
20 there was no way out of it. They knew more than what I was
21 telling.

22 Q Okay. Did you first tell the police this after
23 you were arrested?

24 A (No response)

25 Q You began to change your story about knowing

1 anything after you were arrested?

2 A Yeah.

3 Q Did the fact that you were arrested motivate you
4 to change your story?

5 A Yeah.

6 Q Do you remember being interviewed by Sergeant
7 McCafferty?

8 A Yes.

9 Q Did Sergeant McCafferty threaten you during the
10 interview?

11 A Yes.

12 Q How did he do that?

13 A He told me that he was going to flush me like a
14 fucking turd if I didn't get the story straight and that he
15 was -- his job was on the line and that I had better tell it
16 like they -- get the story straight.

17 Q Okay. Are the stories that you told the police
18 true?

19 A No.

20 Q To the best of your personal knowledge, did
21 Frank Gable kill Michael Francke?

22 A No.

23 Q That's all of the questions I have at this
24 point.

25

RECROSS EXAMINATION

BY MS. MOORE: Ms. Swearingin, isn't it true that you weren't incarcerated in the Marion County Correctional Facility as a material witness until after you left the State of Oregon?

A Right.

Q And went to Colorado?

A Yes.

Q And isn't it true that prior to that time you had executed a release agreement pursuant to your material witness hold indicating that you would not change residences or leave the State of Oregon without the permission of the Court, isn't that correct?

A Yes.

Q Isn't it true that you had a hearing regarding that material witness hold right in front of this Judge that is seated right to your left right here in the courtroom, is that true?

A Yes.

Q And isn't it true he is the one that declared you to be a material witness in this case?

A Yes.

Q And isn't it true that he is the one that asked you to execute a release agreement which basically left you

1 out on the streets and out of custody as long as you didn't
2 flee the state and as long as you kept in contact with the
3 District Attorney's office and you didn't change residences
4 without notifying the Court, isn't that true?

5 A That is true.

6 Q And isn't it true that ultimately in September
7 of '90 you fled the State of Oregon and went to Colorado?

8 A Yes.

9 Q And isn't it true the Court issued a warrant for
10 your arrest on that material witness hold?

11 A Yes.

12 Q And isn't it true that you were brought back
13 from the state of Colorado based on that warrant?

14 A Yes.

15 Q And isn't it true that you have had numerous
16 hearings regarding your material witness status in this case
17 and as a result of those hearings you were held in custody
18 basically at the Marion County Correctional Facility as a
19 result of violating your promise to the Court and going to
20 the state of Colorado without permission?

21 A Yes.

22 Q Now this interview that occurs with the State
23 Police in September of '89, isn't it true that on September
24 27th, 1989, when the police come out to interview you after
25 your PO called you, isn't it true at that point in time you

1 do not tell the State Police that you are an eye witness to
2 the Michael Francke homicide?

3 A Right.

4 Q Isn't it true that immediately after this
5 interview is when you go on the run for a month, basically?

6 A Yeah.

7 Q And isn't it true that during that month period
8 of time is when you contacted a lawyer, Tom Collins, to
9 represent you on this case? Isn't that correct?

10 A Yes.

11 Q And isn't it true, then, that after you are
12 picked up on that warrant for running, basically, your
13 parole officer puts a warrant out for you, is that correct?

14 A Yes.

15 Q And isn't it true after you are picked up on
16 that warrant that that's the night -- the night that you're
17 picked up on the warrant is the night that Laura takes you
18 from juvenile to Hillcrest, isn't that correct?

19 A Yes.

20 Q And isn't it correct at that point in time
21 you're not telling the State Police anything about what you
22 know about the Michael Francke homicide?

23 A Right.

24 Q And isn't it true that at that point in time
25 that you have not told the State Police that you are an eye

1 witness to the murder of Michael Francke?

2 A Right.

3 Q And isn't it true at that point in time that you
4 have not acknowledged any connection at all with Frank Gable
5 on January 17th, 1989?

6 A (No response)

7 Q Isn't that true?

8 A Yes.

9 Q And isn't it true that you then go on a ride
10 with a woman named Laura from JDH to Hillcrest, and when you
11 get out to Hillcrest, isn't it true you wind up telling
12 Laura and wind up telling Gary Jensen, hey, wait a minute
13 folks, I'm a witness, I'm an accessory, I'm an accomplice to
14 murder. You guys don't understand what is going down.
15 Isn't that true?

16 A Yeah. Another lie.

17 Q Okay. But that occurs the night you were
18 arrested and taken back to Hillcrest, is that correct?

19 A Yeah.

20 Q And isn't it true that is prior to you ever
21 telling the State Police anything about being a witness to
22 this murder or knowing anything about Frank Gable killing
23 Michael Francke, isn't that correct?

24 A Right.

25 Q And isn't it true it's another two months of

1 negotiations with yourself and your attorney, Tom Collins,
2 before we can ever sign this letter of immunity that we
3 talked about earlier and before you ever began to talk about
4 any knowledge of the Michael Francke homicide, let alone
5 that you are an eye witness to the Michael Francke homicide,
6 is that true?

7 A Yes.

8 Q And isn't it true that after that letter of
9 immunity is negotiated with yourself and your attorney that,
10 at that point in time, then the State Police are allowed for
11 the first time to interview you and talk to you about what
12 knowledge you have of the Michael Francke homicide, is that
13 correct?

14 A Yes.

15 Q And isn't it true that during the course of that
16 -- those interviews over the next couple of months that you
17 tell varying stories to the State Police about what your
18 knowledge of the Michael Francke homicide is, isn't that
19 correct?

20 A Yes.

21 Q And isn't it true that ultimately in April of
22 '90 you went up, with your attorney present, coming to Grand
23 Jury and testifying under oath at Grand Jury regarding your
24 knowledge of the Michael Francke homicide?

25 A Yes.

1 Q And isn't it true during the course of that
2 testimony, that sworn testimony in Grand Jury, that you
3 basically tell the Grand Jury that, in fact, you were
4 present at the time that Michael Francke was killed?

5 A Yes. Lies.

6 Q Isn't it true you tell the Grand Jury that you
7 were with Frank Gable at the Dome Building the night Michael
8 Francke was killed?

9 A Another lie. Yeah.

10 Q And isn't it true that, in fact, you told the
11 Grand Jury that basically you met Frank Gable that night
12 about -- at the Bender house, isn't that true?

13 A Yeah. Another lie.

14 Q And isn't it true that you told basically the
15 Grand Jury under oath that Shorty brought you over to the
16 Benders that night and dropped you off and you hooked up
17 with Frank Gable at the Benders and ultimately wound up at
18 the Dome Building that night, isn't that true?

19 A Another lie. Yeah.

20 Q Isn't it true that you wound up telling the
21 Grand Jury basically that he was there to get snitch papers,
22 isn't that true?

23 A Another lie. Yes.

24 Q And isn't it true that you indicated that you
25 drove in Frank Gable's car over to the Dome Building, isn't

1 that true?

2 A Yep. Another lie.

3 Q And isn't it true you wound up telling the Grand
4 Jury that the two of you parked Mr. Gable's car over west of
5 the Dome Building in the medical center offices over in the
6 hospital -- in the medical center area and left the car over
7 there, isn't that true?

8 A After the police took me over there, yeah, and
9 showed me all of the area where we could have parked. Yes,
10 it is true that I said that.

11 Q Isn't it true that is what you told the Grand
12 Jury under oath?

13 A Yes.

14 Q And isn't it true that you wound up telling the
15 Grand Jury that the two of you walked across the street,
16 across the grassy area and approached the Dome Building,
17 and, basically, your job that night was to hold jigs, is
18 that correct?

19 A Yeah. Another lie.

20 Q And holding jigs means basically you are
21 supposed to keep a lookout?

22 A Yeah.

23 Q Isn't it true that during that period of time
24 Mr. Gable at some point in time disappeared and left you
25 basically standing in front of a tree that was immediately

1 in front of the north portico porch area?

2 A Yeah. More lies.

3 Q And isn't it true that during that period of
4 time at some point while you are standing there you hear the
5 door of the porch open up, is that true?

6 A More lies after you guys helped me declare that
7 I could have possibly heard that sound.

8 Q And isn't it true, Ms. Swearingen, that you
9 wound up seeing a big tall man walk down the steps and
10 across the grass and approach this white car that was in the
11 parking circle that night?

12 A Yes. More lies.

13 Q Okay. And isn't it true that you indicated that
14 you saw Frank Gable get into a struggle with this big tall
15 man near that white car that night?

16 A More lies. Yeah.

17 Q Isn't it true that you indicated that Shorty at
18 some point in time shows up and that you run over, get in
19 his car, and then the two of you take off. Is that true?

20 A More lies.

21 Q Is it true that you told the Grand Jury under
22 oath basically that essentially you saw -- the last time you
23 saw Frank Gable basically that night was running away from
24 the Dome Building while you and Shorty were driving away?

25 A More lies. Yeah.

1 Q Thank you, Ms. Swearingen.

2 MR. STORKE: Your Honor, before we continue
3 with redirect, it might be appropriate to take our morning
4 break at this time.

5 MS. MOORE: Your Honor, I would just as soon get
6 this completed.

7 THE COURT: I would just as soon continue, also.

8 MR. STORKE: Okay. That is all of the
9 questions we have at this point.

10 THE COURT: You may step down. Thank you.

11 MR. STORKE: And with that, Your Honor, we
12 would ask for the morning break if the Court thinks that is
13 appropriate.

14 THE COURT: We will take a recess.

15 (Jury out) 11:00

16 THE COURT: Okay. We're in recess. Why don't
17 you guys come up. Mr. McKnight, why don't you come up.
18 I'll be up at 2-M.

19 MR. MCKNIGHT: Is my client going to be held
20 here while we're doing this?

21 THE COURT: I don't know. I don't think so.
22 Nobody anticipates her being recalled do they, immediately
23 at least?

24 MR. ABEL: No, Your Honor.

25 THE COURT: I suspect no. They will take her

1 back downstairs.

2 MR. MCKNIGHT: And will there be a court
3 reporter upstairs?

4 THE COURT: No.

5 MR. MCKNIGHT: Okay.

6 THE COURT: Whatever you want to do, I'm going
7 to talk to the counsel, see if we need to hold her. I don't
8 intend to do it on the record.

9 MR. MCKNIGHT: Okay. I would like it on the
10 record.

11 THE COURT: I'll come back and put it on the
12 record. If you don't want to be a part of the conversation,
13 you don't have to be. I'll come back and put it on the
14 record.

15 MR. MCKNIGHT: I just want to make sure that
16 what I need to get on the record, I get on the record.

17 THE COURT: I'll be perfectly happy to let you.

18 MR. MCKNIGHT: Okay.

19 (Recess) 11:05

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1 testimony was discussed fairly much at length as far as John
2 Crouse is concerned, and we never received copies of the
3 minutes and we think at this time they are relevant and we
4 should have copies of them.

5 THE COURT: Are they relevant before what we
6 expect is going to happen happens this morning or do they
7 become relevant only after that.

8 MR. ABEL: Only after that I would say, Your
9 Honor.

10 THE COURT: All right.

11 MR. ABEL: But we just want to make the motion
12 so it's on the record.

13 THE COURT: All right. Let's resolve that then
14 after we go through this 104 hearing, if we're
15 characterizing it correctly as a Rule 104 hearing.

16 All right. Anything else?

17 MR. ABEL: Not at this time.

18 THE COURT: Okay. I don't want to tell the
19 parties what to do. I assume we're here this morning on, in
20 essence, a Rule 104 hearing to determine whether or not,
21 first of all, whether Mr. Crouse is going to testify at this
22 trial and, secondly, if we determine that he is not,
23 thereafter, what we're going to do in that regard.

24 I guess if we were to determine that he is going to
25 testify, we may then further have a Rule 104 hearing as to

1 the relevancy of his testimony. Again, I don't want to
2 characterize what we're doing this morning. I'm not sure
3 it's my place to.

4 MR. ABEL: Well, Your Honor, I thought what we
5 had discussed is we would -- the defense would call Johnny
6 Lee Crouse as a witness, have him sworn, and I would ask him
7 the initial question. Maybe I misunderstood. I was
8 thinking I would ask him the initial question, see what his
9 response is, and then you would either inquire or we would
10 proceed from there. But what I do want to do is continue
11 questioning Mr. Crouse even though he may take the Fifth,
12 specific questions I want to ask of him.

13 THE COURT: Okay.

14 MR. ABEL: To afford him the opportunity to
15 answer the questions or take the Fifth.

16 THE COURT: Okay.

17 MS. MOORE: Your Honor, as the Court is aware,
18 the state talked in length in chambers this morning with
19 defense counsels' and Mr. Gorham who is present regarding
20 this potential testimony this morning. And Mr. Gorham has
21 indicated numerous potential positions that Mr. Crouse might
22 take and concerns about prosecution that Mr. Crouse has for
23 making false statements to the police in the past or any
24 perjury that might have been committed above and beyond any
25 issues about this particular homicide. And our only concern

1 this morning is -- and we wanted to make it absolutely clear
2 to Mr. Gorham, and I presume he has made it clear to his
3 client, Mr. Crouse, that the state is not granting any
4 immunity to Mr. Crouse this morning for any false statement
5 he may have made in the past, any perjury he may have
6 committed in the past, any crime he might commit here today
7 or any involvement in the Michael Francke homicide. And that
8 has been the state's position, and continues to be. The
9 only reason I raise it again this morning is simply because
10 of the statute, it think 136.617 and 136.619.

11 Basically, this exchange at this point in time is
12 between Mr. Abel, Mr. Gorham and yourself, and we don't want
13 any misunderstandings on the part of anyone in this
14 courtroom, particularly Mr. Gorham and Mr. Crouse, that
15 because this particular part of the proceedings are not
16 being handled by the state that somehow we're acknowledging
17 or offering or granting some kind of immunity for committing
18 any crime, false statements, perjury, prior false statements
19 or anything to do with this homicide.

20 THE COURT: Okay. Thank you. We'll acknowledge
21 that Mr. Steve Gorham, attorney for Mr. Crouse, is present
22 in court this morning and has, in fact, been part of a
23 discussion we have had in chambers prior to this time
24 concerning the procedure, how we're going to proceed here
25 this morning.

1 Are we ready to call Mr. Crouse?

2 MR. ABEL: Yes, Your Honor. We would call --
3 defense calls Johnny Lee Crouse.

4 THE COURT: All right.

5 If you would come forward, please, Mr. Crouse. And if
6 we could get you to -- I realize you have on what is
7 commonly known as a belly chain, but if you would do the
8 best you can to raise your right hand, this lady is going to
9 give you an oath this morning before you're asked some
10 questions.

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JOHNNY LEE CROUSE

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please.

THE CLERK: Would you state your full name and
spell your last name, please?

THE WITNESS: Johnny Lee Crouse, C-R-O-U-S-E.

DIRECT EXAMINATION

BY MR. ABEL: Good morning, Mr. Crouse.

A Good morning.

Q The gentleman to your immediate right, Steve Gorham, is he presently representing you as your attorney?

A Yes. He is.

Q And he is representing you in these proceedings and your participation in these proceedings, is that right?

A Yes, sir.

Q In January 17, 1989, did you kill Michael Francke?

A No.

Q On January 17, 1989, were you on the Oregon State Hospital grounds near the Dome Building?

A I respectfully refuse to answer the questions under the statute of the United States of Oregon constitutional rights against self-incrimination.

Q On April 4th, 1989, in the presence of Officer Kenneth Pecyna and Detective Martinak, did you admit that you murdered Michael Francke?

A I refuse to answer the questions under the statute of the United States of Oregon constitutional rights against self-incrimination.

Q On April 4th, 1989, in the presence of Officer

1 Peceyna and Detective Martinak, did you tell them you were
2 paid a sum of money to kill Michael Francke?

3 A I respectfully refuse to answer the question
4 under the statute of the United States of Oregon
5 constitutional rights against self-incrimination.

6 Q On April 5th, 1989, in the presence of Officer
7 Pecyna and Detective Martinak, did you admit killing Michael
8 Francke?

9 A I respectfully refuse to answer the questions
10 under the United States of Oregon constitutional rights
11 against self-incrimination.

12 Q On April 5, 1989, in the the presence of Officer
13 Pecyna and Detective Martinak, did you admit that you
14 stabbed Michael Francke in the arm and in the heart?

15 A I respectfully refuse to answer the questions
16 under the United States of Oregon constitutional right
17 against self-incrimination.

18 Q In April of 1989, did you prepare a handwritten
19 statement wherein you admitted killing Michael Francke?

20 A I respectfully refuse to answer the questions
21 under the statute of the United States constitutional rights
22 against self-incrimination.

23 Q On April 6th, 1989, in the presence of Officers
24 Pecyna and Detective Martinak, did you tell them that you
25 stabbed Michael Francke with a knife that had a single edge?

1 A I respectfully refuse to answer the questions
2 under the United States of Oregon constitutional rights
3 against self-incrimination.

4 Q On April 6th, 1989, in the presence of Officer
5 Pecyna and Detective Martinak, did you tell them that the
6 last stab wound inflicted on Michael Francke was done behind
7 his car approximately eight to ten feet away from that car?

8 A I respectfully refuse to answer to -- answer to
9 --

10 MR. ABEL: Your Honor, if Mr. Crouse is going to
11 be taking the Fifth Amendment on all of these questions,
12 maybe if he would be allowed to just answer the same.

13 THE COURT: The same or I'm invoking my Fifth
14 Amendment privilege or taking the Fifth, whatever, would
15 satisfy the Court.

16 MR. ABEL: Your Honor, I'm through with this
17 witness other than I would request that he be declared to be
18 unavailable as a witness in these proceedings.

19 THE COURT: I think the state's prepared this
20 morning to stipulate that he is unavailable.

21 MS. MOORE: Well, Your Honor, if I might have a
22 moment.

23 (Plaintiff's counsel conferring)
24
25

1 MS. MOORE: If I heard Mr. Crouse's testimony
2 correctly, he indicated or answered the first question of
3 Mr. Abel without invoking the privilege. He indicated -- I
4 heard him anyways to answer the question, "Did you kill
5 Michael Francke?" And he said, "No." And Mr. Abel went on
6 to ask him questions about being on the hospital grounds and
7 had he told the police this and this and this, and that's
8 when he started invoking his privilege.

9 MR. ABEL: Your Honor, it was his intent to
10 invoke the privilege from the beginning.

11 MS. MOORE: Well, he testified no, he did not
12 kill Michael Francke. I think that puts a whole new light
13 on what we're doing here this morning, and I would like a
14 moment to consult with counsel before we stipulate or agree
15 to his unavailability.

16 THE COURT: Okay.

17 MR. ABEL: While they're conferring, Your Honor,
18 it was his intent to take the Fifth Amendment to that first
19 question.

20 MS. MOORE: Well, the bottom line is --

21 MR. ABEL: He didn't understand. I understand
22 what he said, but I don't believe he understood what the
23 question was.

24 THE COURT: Let me see what they're going to do.
25 We may have to get back to this issue.

1 MR. ABEL: Fine.

2 MS. MOORE: Your Honor, based on Mr. Crouse's
3 answer to the first question, "Did you kill Michael
4 Francke?" And he indicated, "No," we are not prepared to
5 stipulate to his unavailability at this point in time.

6 I suppose that the defendant has that burden to
7 demonstrate that in order to go to the next step of hearsay.
8 He has answered that question, and under oath here today he
9 said he did not kill Michael Francke. So --

10 MR. ABEL: Your Honor, I guess as the
11 defendant's position at this point would be, if -- by his
12 responding no to question number one, did you kill Michael
13 Francke on January 17th, 1989, he has waived his right to
14 take the Fifth, then we would request an order of this Court
15 directing him to answer all further questions.

16 MR. GORHAM: Your Honor may --

17 MS. MOORE: Your Honor, I guess my legal
18 interpretation of what's going on here, where we are,
19 Mr. Crouse started to invoke his Fifth where he was asked
20 repeatedly did you tell this -- the police this and did you
21 tell the police this and did you tell the police this. And
22 that's precisely the issue Mr. Gorham was concerned about in
23 terms of his potential prosecution for hindering prosecution
24 for making false statements to the police officers
25 originally, early on in this investigation. That's always

1 been Mr. Gorham's concern about his client, and that's when
2 I heard Mr. Crouse start to exercise his Fifth, was when
3 they got into issues about did you tell the police officers
4 the following. And at that point he continually said I
5 don't want to answer that, and that would be consistent with
6 his concern that he exhibited on November 30th of '89 and on
7 March 26 of '90 when he gave his final statement to the
8 Oregon State Police and when he came in and gave his sworn
9 testimony in Grand Jury. Basically, that he did not kill
10 Michael Francke. His concerns on both of those dates were
11 that he not be prosecuted for any kind of hindering
12 prosecution for making false statements to the police
13 officers early on in this investigation.

14 MR. GORHAM: Your Honor, Mr. Crouse would refuse
15 to answer that question in front of the jury. He did not
16 understand that question when it was asked of him today. He
17 intended to invoke his Fifth Amendment rights to that
18 question and would invoke his Fifth Amendment rights in
19 front of the jury tomorrow if that's the way it happens.

20 MS. MOORE: It seems to me that the cat is out
21 of the bag at that point, Your Honor. He answered the
22 question and he answered it truthfully and then he didn't
23 start invoking that privilege until we got to the concern
24 that he has always had which is making false statements to
25 begin with and prosecution for hindering prosecution.

1 MR. ABEL: Well, Your Honor, it would appear to
2 me that the ultimate issue is the statement Ms. Moore just
3 made, he answered the question truthfully. It was always my
4 belief that the jury decides who is telling the truth and
5 who isn't, not the prosecuting attorney. And so if we're
6 going to make the determination that, yes, he has waived his
7 -- his Fifth Amendment rights by answering that question no,
8 then surely he has waived the right to refuse to answer all
9 of the other relevant questions that go along with making
10 the determination of truth or lie.

11 THE COURT: Well, all the Court knows is that he
12 has answered the question. You posed the question that he
13 answered.

14 MR. BOSTWICK: The only times he testified under
15 oath as to whether he has killed Mr. Francke is he has
16 testified in Grand Jury under oath, he was asked the
17 question whether he killed Michael Francke, he said no. He
18 was asked this morning whether he killed Mr. Francke under
19 oath, he said no. All of the other statements can be used
20 as impeachment, they were unsworn statements. They're not
21 substantive evidence, they're impeachment. Therefore,
22 they're irrelevant.

23 MR. ABEL: Your Honor, he has testified under
24 oath here. He has testified under oath before the Grand
25 Jury. I don't know what he said before the Grand Jury.

1 Maybe he would like to tell us what he said in front of the
2 Grand Jury if he has waived his right. It's my
3 understanding that the evidence that is presented to the
4 Grand Jury is secret and that the defense is not entitled to
5 inquire. So, we have Mr. Bostwick and Ms. Moore here
6 talking about the testimony which we aren't entitled to see.
7 We can't inquire of him about it, but they're saying, oh,
8 well, he has testified the same both places, but that's it.
9 Drop it. Forget it. Don't go any further. Well, I think
10 if he says no, and considering the fact that he has
11 confessed on numerous occasions, that we have the right to
12 fully examine. And it is our position that because he was
13 used as a witness in the Grand Jury, he did testify before
14 the Grand Jury, that he is a relevant witness for the
15 determination of truth or lie to that one question that he
16 just answered no to.

17 MS. MOORE: Your Honor, basically in terms of
18 the Grand Jury notes, Mr. Abel has already raised that. I
19 think Mr. Bostwick and I are officers of the Court, so I
20 presume Mr. Abel would not presume that we're standing here
21 representing something to the Court that did not occur.
22 Certainly we could bring in the clerk of the Grand Jury and
23 let -- I mean, if he is not going to accept it from the
24 notes or from the -- our word, she can always testify as
25 opposed -- as -- I suppose to what Mr. Crouse did or did not

1 state in Grand Jury, if that's even necessary.

2 The bottom line is he said in this courtroom this
3 morning under oath he did not kill Mr. Francke, and if
4 Mr. Abel wants to go down the road in some way trying to
5 elicit these other statements that he is taking the Fifth
6 on, I suppose he can pursue that route. But the state's
7 position at that point is basically that they're
8 impeachment. Because they are impeachment, they are not
9 substantive. Because they're not substantive, the jury
10 cannot rely on them as substantive evidence and, therefore,
11 this man has basically told this Court today under oath what
12 he told the Grand Jury under oath which is he -- I did not
13 kill Michael Francke, therefore, his testimony in this
14 proceeding is irrelevant.

15 MR. ABEL: Your Honor, it's always been my
16 thought as far as what you do before a jury in a case such
17 as this is you place the person on the stand under oath and
18 the jury has the right to make the determination of truth or
19 lie. And one of the things that they can base that
20 determination on is the credibility of the witness, how the
21 witness testifies, the appearance of the witness. And what
22 Ms. Moore and Mr. Bostwick is telling us is this jury isn't
23 entitled to do that. He says he didn't do it, so go away
24 and leave him alone. He has confessed several times. Now
25 he says we didn't do it. We made that determination. We

1 decided he didn't do it. Get him away from the jury. Don't
2 let the jury talk to him and look at him and weigh his
3 credibility.

4 MR. BOSTWICK: That's the very same argument
5 Mr. Abel made on another occasion in opposition to the
6 Evidence Code, the same argument that we have discussed in
7 chambers. That was a common law rule against false
8 confessions. A common law rule allowing people to testify
9 about false confessions. The Evidence Code now allows
10 statements against penal interest under certain
11 circumstances. The requirement must be satisfied in the
12 Rule 104 hearing, as the situation after an accused offers
13 such a statement is not well adapted to control by rulings
14 as to weight of the evidence. The Court has to make this
15 decision so it's not thrown in front of the jury. In such a
16 situation, in judging the credibility, the trial court
17 should construe the corroboration requirement in such a
18 manner that effectuates it's purpose to circumvent
19 fabrication. There is --

20 THE COURT: What are you quoting from?

21 MR. BOSTWICK: I'm quoting from Rule 803 (4)(c)
22 (sic Rule 804 (3)(c).

23 THE COURT: The Rule or the commentary?

24 MR. BOSTWICK: The commentary, but certainly I
25 can give you the case law on that, Your Honor.

1 MR. ABEL: Your Honor, I would, if I could, make
2 one more comment. We're not talking about a false
3 confession at this point. We're talking about a denial.
4 The question, "Did you kill Michael Francke on January 17,
5 1989?" "No."

6 MR. BOSTWICK: That's --

7 MR. ABEL: We are entitled to impeach this
8 gentleman before the jury with credible evidence of guilt
9 and of falsehood.

10 MR. BOSTWICK: Your Honor, that's exactly why
11 it's irrelevant. You can't put people on the stand and say
12 they did not kill Michael Francke. Under oath at the Grand
13 Jury he said he did not kill Michael Francke. This morning
14 he said he did not kill Michael Francke. The only
15 statements that they have for impeachment were unsworn
16 statements. Not substantive evidence. Therefore, the jury
17 cannot rely upon those in their deliberations. That's the
18 whole reason for the Rule.

19 THE COURT: Well, he certainly raised an
20 interesting question this morning. Well, let me get us to
21 this point and then you can tell us where we are.

22 I have heard Mr. Crouse's counsel say that Mr. Crouse
23 didn't understand the question, but we all sat here -- we
24 can get back to un-ringing the bell, we all sat here. I
25 heard Mr. Abel's question. He was very direct, and

1 Mr. Crouse did not hesitate to respond -- to respond to the
2 question. Now, belatedly, counsel says he didn't understand
3 the question and he wants to invoke his Fifth Amendment
4 right based on the fact that he failed to understand the
5 question. A reasonable person has to find that he
6 understood the question. He answered it. So, at least as
7 to that question, he didn't invoke his Fifth Amendment
8 rights. He answered it. I think he has answered it under
9 oath in this proceeding. Now where do we go?

10 Now, thereafter, he has invoked his Fifth Amendment
11 privilege relating to prior statements he may have made
12 about the very same subject matter of which he has under
13 oath answered a question this morning without invoking his
14 privilege. Now where are we?

15 MR. ABEL: Well, Your Honor, I think that,
16 number one, as far as the first question, we are entitled to
17 impeachment with prior inconsistent statements.

18 And if he is going to be allowed to maintain his Fifth
19 Amendment right to the balance of any of the questioning, he
20 is then an unavailable witness as to those issues.

21 THE COURT: I think if you're going to impeach
22 him, he may say I don't want to answer the question, I'm
23 going to invoke the Fifth. There are other witnesses that
24 can come forward and say on a previous time or a previous
25 date he made the following statement, and those can be used

1 for impeachment purposes. I agree with you. Yeah. He can
2 still invoke his Fifth, but you have other ways now to get
3 that in.

4 Now we get to the issue of just what are they worth
5 and what can they be used for.

6 MS. MOORE: Exactly. That's the state's
7 position. They're not relevant because the Evidence Code is
8 real clear that the statements from here on out that
9 Mr. Abel might want to produce are impeachment, they are not
10 substantive evidence and they cannot be used for or relied
11 on by the trier of fact in rendering a verdict in this case.
12 They're not substantive evidence.

13 THE COURT: Where are you reading from please?

14 MS. MOORE: I'm looking at Rule 607, who may
15 impeach, and then the commentary.

16 THE COURT: I have always been concerned about
17 the language in the commentary, this very issue about prior
18 statements that were not under oath.

19 MS. MOORE: Right. And the commentary supports
20 the state's argument basically which are these are not
21 substantive and there is a fear that the trier of fact will
22 accept prior statements as substantive. That's why they put
23 certain restrictions on them, just for that reason, because
24 obviously a jury doesn't always understand the niceties of
25 legaleese in terms of what is substantive evidence and what

1 is impeachment. That's the whole --

2 THE COURT: Where are you reading from?

3 MS. MOORE: I'm reading -- I don't know, I hope
4 we have the same one, page 116.

5 MR. BOSTWICK: Page 116.

6 MS. MOORE: The last full paragraph above where
7 Rule 608 is. It states, "Special mention should be made of
8 impeachment by prior inconsistent statements."

9 THE COURT: Okay. Well, I guess we can argue
10 this tomorrow morning, but at least at this point, you know,
11 Mr. Gorham may have something further to say about this and
12 we may get into a different issue with this witness, but, at
13 this point, I've found that he answered that question. He
14 knew what the question was, and he answered it. He didn't
15 invoke his Fifth Amendment privilege.

16 So, I would expect tomorrow morning if he is called as
17 a witness that is going to be his testimony. If he invokes
18 the Fifth, we're going to have an argument whether he is
19 entitled to do so at that point in time given his sworn
20 testimony this morning.

21 But let's say he were to get on the witness stand and
22 testify consistently with what he has told us here today?
23 Well, I can see it says the advisory committee recommended
24 -- but it says the advisory committee recommended, for
25 example, that prior inconsistent statements be allowed for

1 impeachment only if the testimony at trial is actually
2 injurious to the calling party's case. And, two, the
3 testimony is contrary to what the calling party anticipated.

4 I would assume that based on his testimony today under
5 oath you can only anticipate that that would be his same
6 testimony again tomorrow which raises a question, I guess,
7 of whether you could even put on this impeachment.

8 MS. MOORE: Precisely, Your Honor. And the
9 other -- I think the other issue we get to is I don't know
10 if putting it off to tomorrow is going to accomplish
11 anything because it's -- until we get this issue resolved,
12 it needs to be litigated outside the presence of the jury.
13 For all of us to congregate once again tomorrow to do this,
14 I don't think it accomplishes anything.

15 THE COURT: Tomorrow was merely a suggestion,
16 but I think certainly you people need to go look at some law
17 or somebody does because that's the position we seem to be
18 in now, and I'm just raising questions. I have found that
19 he didn't invoke his privilege to the first question. He
20 answered it.

21 MR. ABEL: And another point, Your Honor, is
22 that my very second question was -- his response in taking
23 the Fifth was to a substantive issue, whether or not he was
24 on the Oregon State Hospital grounds on January 17, which
25 goes directly to counter the -- the state's version of the

1 case.

2 I also -- here are some other things that if I bring
3 in for impeachment purposes -- last stab wound, I was behind
4 the car about eight to ten feet away. That puts him almost
5 where Wayne Hunsaker testified he saw the two people
6 standing. And that's information that was not available to
7 anyone in April of 1989.

8 He also testified and -- question, is it a double
9 edged knife or a single edged knife? There was nothing in
10 evidence, nothing public, nothing at all that told us at
11 that point in time in April of '89 there was -- that the
12 death was of a result of a single edged knife. That was not
13 in the press. He makes a direct -- and these are just the
14 two things. What we are intending to do is bring officers
15 in that talked to this man and inquire about specific things
16 that he told them that go right along with what we know
17 about this case as we stand here today. Things that fit the
18 scenerio. Things that put the pieces of puzzle together.
19 He said it. He told these back in April of '89. He said
20 these things. And I think we are entitled to present these
21 statements he made to the jury. To put -- so they can put
22 it together with the chronology and all of the other things
23 and make a determination whether this guy is telling us the
24 truth or he is lying.

25 THE COURT: I think you're entitled to do that

1 through other witnesses. But if he wants to invoke his
2 privilege, I think given the spectrum of perjury in unsworn
3 statements, hindering prosecution, all of those kinds of
4 things, I have to allow him to invoke his Fifth Amendment
5 privilege if he cares to do that. I don't know what his
6 prior testimony has been, but if he thinks it's going to
7 perhaps be incriminating, I have to let him do it.

8 Certainly you can put that on by way of impeachment and the
9 jury is going to hear it, but not as substantive evidence.

10 If I understand this Rule correctly, they're going to
11 hear it and they can use all of that in determining if he is
12 telling the truth or not if he answers that question in
13 front of them. He may not answer it. And then he and I are
14 going to get in an issue whether he is going to spend time
15 in the Marion County jail until he does answer the question.

16 MR. ABEL: Okay.

17 MS. MOORE: For the record, Mr. Abel indicated
18 that none of this information was released, and on January
19 25, 1989, there is a front page article showing exactly
20 where this attack occurred and the route that the person
21 ran. And that was long before April of '89. It's in two
22 different newspapers. So, this information was available to
23 people who were -- had access to newspapers and access to
24 the news media in terms of where the attack occurred and
25 precisely the route the man ran.

1 THE COURT: We're getting to substance.

2 MR. ABEL: Yeah. And the situation is that it
3 points out right by the car. And as you know, you heard
4 Wayne Hunsaker's testimony, that it doesn't happen near
5 where you park your car but -- where Michael Francke's car
6 was parked, and now we have this man's statement in April
7 that it was eight to ten feet away from the car which is
8 contrary to the state's theory of the case but it goes along
9 with Hunsaker's theory.

10 MS. MOORE: Your Honor, I'm happy to litigate
11 this whole thing right now and if the Court wants me to read
12 it in the record I'm happy to talk about all of the
13 inconsistencies in all of the statements because we need to
14 be real clear Mr. Crouse made a statement on February 15,
15 1989, he denied it. Statements on April 4th and April 5th,
16 6, 9, 11, 13, June 15, June 22nd and November 30th. And
17 then he testified under oath at Grand Jury and now he has
18 testified under oath here this morning. And so it's not
19 quite as Mr. Abel has interpreted or tried to suggest to the
20 Court in terms of what these statements were all about,
21 number one. And, number two, whether there is any
22 corroboration for them. And clearly that's why the state's
23 position has been basically you need to listen to everything
24 and all of those statements and then look at the total lack
25 of corroboration in those statements before any kind of

1 decision can be made under 804. But we don't even get to
2 804 this morning since Mr. Crouse has clearly said under
3 oath that he did not kill Michael Francke and, therefore, we
4 don't get beyond the first argument which is any further
5 evidence offered is irrelevant since he said he did not kill
6 Michael Francke. All they can do at this point is offer
7 additional statements for impeachment purposes. Those
8 impeachment statement are not substantive and cannot be
9 relied on by the trier of fact. Therefore, the evidence is
10 not admissible because it's irrelevant.

11 THE COURT: Well, I'll be happy to listen to
12 either or both sides either early this afternoon or later
13 this afternoon. I will give everyone a chance to look at
14 the law. But I, at this point, if he were to be called as a
15 witness sometime before this trial ends and he were to
16 attempt to invoke his Fifth Amendment to the same question
17 that he has answered here this morning, I would tell him
18 that he cannot do that. I would tell him to answer the
19 question. He has previously answered it under oath. And we
20 can proceed from there. I guess if he answers that question
21 the same way he did here this morning, then we get into this
22 issue. And if you want to litigate that this afternoon, I'm
23 available to do it.

24 MS. MOORE: State's available, Your Honor.

25 THE COURT: Whether it can -- whether it can be

1 offered, whether it can be admitted, and for what purpose, I
2 guess, would be the primary subject of inquiry.

3 MR. ABEL: The problem I have is my -- one of my
4 expert witnesses is coming in and will be here at about two
5 o'clock, I believe.

6 THE COURT: Okay.

7 MR. ABEL: And I was intending to be with him
8 the remainder of the day to get prepared because he is
9 testifying tomorrow.

10 THE COURT: Okay.

11 MR. ABEL: I would be prepared to argue the
12 issue tomorrow morning at -- whenever the Judge decides.
13 And then we can proceed with -- what I intend to do is if
14 you -- if the Court says he is going to answer the question,
15 which you said you would, and you rule that it is -- the
16 testimony that I want to elicit is material and relevant for
17 impeachment purposes, I'm going to do what I already told
18 you I was going to do, and that is call the officers that
19 were involved in the interviews and talk to them about
20 specific things he told them which coincide with the whole
21 scenario as per what has been presented to the jury so far
22 during the course of this trial. And that would be my
23 intent at that time.

24 THE COURT: Okay. So you want to do it
25 tomorrow, whenever? Tomorrow morning, whenever?

1 MR. GORHAM: Your Honor, if I might, I don't
2 know if it makes any difference or not but if Mr. Crouse
3 refused to answer even though you -- you asked him to
4 answer, ordered him to answer, and he still refused, while
5 he might or might not be in contempt of Court, that may or
6 may not make him unavailable. And I think that's something
7 you all might consider because that at least is my
8 indication is what he probably would do --

9 THE COURT: Okay.

10 MR. GORHAM: In front of the jury.

11 MR. ABEL: I didn't hear.

12 MS. MOORE: Can you run that by us again?

13 MR. GORHAM: I'm sorry. The scenario would be,
14 as I understand it, that Mr. Abel would ask the same
15 question of Mr. Crouse that he just asked that Mr. Crouse
16 answered, Mr. Crouse would probably invoke his Fifth
17 Amendment rights in front of the jury. Your Honor, I would
18 assume, would order him to answer that question based on a
19 waiver or whatever of his Fifth Amendment right because he
20 waived -- he answered today. He might then refuse to
21 answer that question even under the penalty of contempt in
22 front of the jury. That may or may not change the scenario
23 that you're all thinking about. It's my assumption at this
24 point that that's what would happen tomorrow if he was
25 placed in front of the jury.

1 MS. MOORE: Your Honor, the whole purpose of a
2 104 hearing is -- is exactly what we're all doing here today
3 in this courtroom without the jury being here, is to make
4 this determination about whether this evidence is relevant
5 and admissible. It seems to me we have gone far enough down
6 this road today to make that decision. That it's not
7 admissible because it's not relevant. I'm not --

8 THE COURT: Which part is not admissible?

9 MS. MOORE: Basically, if he is testifying as he
10 did today under oath and as he has in the past under oath,
11 that he did not kill Michael Francke, it's not relevant
12 evidence to go to the jury because if you allow the Court or
13 allow Mr. Abel to bring in the other statements to impeach,
14 the jury cannot rely on that impeachment as substantive
15 evidence. The trier of fact cannot rely on that as
16 substantive evidence to render a verdict in this case,
17 therefore, you have somebody testifying I did not kill
18 Michael Francke, it's not relevant to the -- these
19 proceedings and, therefore, not admissible.

20 THE COURT: I want to get back to that as a
21 threshold issue. You're suggesting that even calling him as
22 a witness and putting him on the stand, if he answers that
23 question the same that the answer is today, it's not
24 relevant?

25 MS. MOORE: That's my position.

1 THE COURT: So we never get to all of the rest
2 of the issues because you can't impeach what he doesn't
3 testify?

4 MS. MOORE: Exactly.

5 THE COURT: All right.

6 MR. BOSTWICK: Right. .

7 MR. ABEL: But he did testify.

8 MS. MOORE: We can go back and forth on this
9 until the cows come home I suppose, Your Honor, but the man
10 has testified under oath here today that he did not kill
11 Michael Francke. And that's the issue. And so I don't care
12 how many times we walk back into this courtroom and how many
13 times we go down this road again, that's the purpose of this
14 104 hearing today. He has testified under oath. He has
15 told you, Your Honor, what his sworn testimony is in this
16 courtroom under oath. That's what you need to rely on in a
17 104 hearing to make a decision whether this is relevant and
18 admissible. And I would submit to the Court that's why
19 we're here. It's a 104 hearing. You have the testimony.
20 You need to make that decision. And we submit we don't need
21 to come back tomorrow and the next day and the next day.
22 You have the evidence on the record before you. Make that
23 ruling.

24 THE COURT: Well, it's all very interesting.
25 I'm sure I don't want to do this all over again on this one

1 issue. I will give it some thought. I guess I'll talk to
2 counsel early this afternoon if I think something needs to
3 be done before I make some kind of a ruling.

4 MS. MOORE: So are you just going to contact
5 counsel or do you want us to --

6 THE COURT: Yeah.

7 MS. MOORE: Contact you at 1:30 or what?

8 THE COURT: Contact me if you want to or I will
9 call you.

10 MS. MOORE: All right, Your Honor.

11 MR. ABEL: Thank you, Your Honor.

12 THE COURT: I'll see you at 1:30. I have a long
13 meeting, you better make it at 1:30.

14 MR. BOSTWICK: See you at 1:30, Your Honor.

15 THE COURT: Okay.

16 (Preceeding concluded) 11:30

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* * * * *

Tuesday, June 18, 1991

(Whereupon the following proceedings were had,
to-wit:)

THE DEPUTY: All rise.

THE COURT: Be seated, please.

Good morning.

MS. MOORE: Good morning, Your Honor.

MR. STORKEL: Good morning, Your Honor.

MR. ABEL: Good morning.

THE COURT: I'm ready. How are we going to
proceed this morning? Oh, I have to make a ruling first
from yesterday. I think the first thing that I have to rule
on is whether or not Mr. Crouse is available or not based on
Rule -- the 104 Rule hearing we had yesterday morning. And
given his answer to the first question that he was asked, I
find that he is available as a witness.

Thereafter, having found that based again on the
evidence at the hearing the answer to the question that he
was asked would be irrelevant to this jury. Given that I
find that the answer is irrelevant, there won't be any
testimony to be presented to the jury so there won't be any
need to impeach his testimony, he didn't give any testimony
to the jury, the trier of the fact.

I think that takes us through to the end.

1 The only other ruling would be unavailability, and
2 then we would have some things to concern ourselves with.

3 MR. ABEL: Is that it?

4 THE COURT: Have I stated enough to get the
5 issue on the record?

6 MR. BOSTWICK: I believe you have. I believe
7 you have based upon what occurred yesterday and discussions
8 and arguments by both counsels.

9 THE COURT: Okay.

10 Mr. Abel?

11 MR. ABEL: Your Honor, I believe you stated the
12 issue. We would at this time except to your ruling.

13 THE COURT: Okay.

14 MR. ABEL: And we would like to make an offer of
15 proof.

16 THE COURT: Okay. Are you prepared to proceed
17 forward with that?

18 MR. ABEL: I believe so.

19 Is John Crouse back there? I believe he is. We would
20 call John Crouse as our first witness.

21 THE COURT: All right. Thank you.

22 Well, he was sworn for the purpose of yesterday's
23 hearing. I guess this offer of proof is kind of in the
24 nature of the trial. I'm going to have him sworn again just
25 so that we're sure.

1 Mr. Crouse, again, if I could have you -- and, again,
2 I realize you have on what we all commonly refer to as belly
3 chains, but if you would please raise your right hand as
4 best as you can this morning and take an oath before you
5 testify.

E. R.-787

Johnny Lee Crouse D -

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JOHNNY LEE CROUSE

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please.

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: Johnny Lee Crouse, C-R-O-U-S-E.

DIRECT EXAMINATION

BY MR. ABEL: Good morning, Mr. Crouse. For the record, I'll note that your attorney, Steve Gorham, is standing to your immediate right, is that correct?

A Yes.

Q On April 4th, 1989 --

MR. BOSTWICK: Your Honor -- Your Honor, for the record, I think the state wants to object to this offer of proof and we want to make sure that this is in no way like a motion, renewed motion or a -- a motion to reopen the 104 hearing. This is merely an offer of proof. And the Judge has made a ruling in regards to the testimony of Mr. Crouse as being irrelevant in the trial.

THE COURT: I have. And Mr. Abel has indicated this morning this is an offer of proof, but just so we have the record perfectly clear, that is what the purpose of this testimony is, is that correct?

MR. ABEL: Yes. It's for preservation for appellate purposes.

MR. BOSTWICK: I just wanted to make the record clear.

THE COURT: Thank you.

MR. BOSTWICK: Thank you.

THE COURT: The Court does, too.

1 MR. ABEL: Mr. Crouse, on April 4th, 1989, do
2 you recall having a conversation with Detectives Martinak
3 and Pecyna?

4 THE WITNESS: I respectfully refuse to answer
5 this question based on the Oregon Statute of the United
6 States of -- constitution, Oregon constitution, the right
7 against self-incrimination.

8 MR. ABEL: On April 4th, 1989, did you confess
9 that you murdered Michael Francke on January 17th, 1989?

10 A I respectfully refuse to answer this question
11 based on the Oregon Statute of the United States
12 Constitution of the Oregon Constitution, the rights against
13 self-incrimination.

14 Q On April 5th, 1989, do you recall having a
15 conversation with Detective Martinak and Pecyna?

16 A I take the Fifth Amendment.

17 Q On April 5th, 1989, did you tell Detective
18 Martinak and Pecyna that you stabbed Michael Francke with a
19 single edged knife?

20 A I take the Fifth Amendment.

21 Q On January 17th, 1989, did you kill Michael
22 Francke?

23 A I take the Fifth Amendment.

24 Q That is all I have, Your Honor.

25 THE COURT: I assume you have no questions of

1 Mr. Crouse?

2 MS. MOORE: No, Your Honor.

3 THE COURT: Thank you. You may step down.

4 MR. ABEL: The defense will call Detective
5 Martinak, Randy Martinak.

6 THE COURT: Detective Martinak.

7 Good morning, sir. If you would come forward, please,
8 and be sworn.

9 MR. ABEL: One other thing, Your Honor, as far
10 as Mr. Crouse is concerned, we have no objection -- we have
11 no further hold and we do not want to pursue any contempt
12 proceeding pursuant to his failure to comply with our
13 subpoena.

14 THE COURT: Okay. Wait one second, sir.

15 At this point in time the only reason that he is
16 within Marion County is that you filed a motion requesting
17 that the Court issue an order to show cause why he should
18 not be held in contempt for disobeying a subpoena. The
19 Court did issue that show cause, and are you telling me this
20 morning that you want the Court to void that order?

21 MR. ABEL: Yes, we do. We do believe that we
22 have grounds to proceed with a contempt proceeding if we
23 wanted to. We do not want to. We did get him here pursuant
24 to the warrant. We are now done with him, and we have no
25 further interest in him.

E. R.-791

Johnny Lee Crouse D -

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1 THE COURT: Okay. Given that it was your
2 motion, I'll void the order.

3 If you would please raise your right hand and be
4 sworn.

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E. R. -792

Randy C. Martinak D -

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RANDY C. MARTINAK

called as a witness on behalf of the defendant, first being
duly sworn to tell the truth, the whole truth and nothing
but the truth, testified as follows:

THE COURT: Be seated, please, sir.

THE CLERK: Would you state your full name, and
spell your last name, please?

THE WITNESS: Randy C. Martinak,
M-A-R-T-I-N-A-K.

E. R. -793

Randy C. Martinak D -

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DIRECT EXAMINATION

BY MR. ABEL: Good morning, Detective Martinak.

Could you tell us please how you are currently employed?

A I'm the Assistant Chief Investigator in the Intelligence Unit, Department of Justice, Criminal Justice Division.

Q How long have you worked for the Department of Justice?

A Since December 24th, 1984.

Q In 1989, did you become involved in the investigation of the death of Michael Francke?

A Yes.

Q Do you recall when you first became involved in the investigation?

A I don't recall the exact date, I was out of state at the time the crime happened and it was three or four days after that, that I returned to the state and was assigned to assist the State Police in their investigation of that death.

Q In the course of your work in the investigation of the Michael Francke homicide, did you come in contact with an individual named Johnny Lee Crouse?

A Yes, I did.

E. R. -794

Randy C. Martinak D -

9521

1 Q Did you bring your paperwork with you? If you
2 need to refer to dates and times, when did you first come in
3 contact with John Crouse?

4 A First time I met him personally was at
5 approximately nine o'clock on the morning of April the 4th.

6 Q Where did that meeting take place?

7 A In an interview room at District II, State
8 Police.

9 Q Were you summoned there by some other
10 individual?

11 A No.

12 Q Would you tell us please what transpired at that
13 time?

14 A At that time, he was brought -- John Lee Crouse
15 was brought from the Penitentiary to that interview room so
16 that I could talk to him about the Michael Francke case.

17 Q On April 4th, 1989, did John Crouse admit to you
18 that he committed the murder of Michael Francke?

19 A Yes, he did.

20 Q Who else was present at the time, if anybody?

21 A Detective Pecyna with the Oregon State Police.
22 Corrections Officer King with the Corrections Division. And
23 later, Captain Forbes.

24 Q Could you relate to us please the substance of
25 the conversation? What he told you about what happened on

E. R. -795

Randy C. Martinak D -

9522

1 January 17th, 1989?

2 A During the initial interview, he told me that he
3 had been paid to do it. Later he changed his story and said
4 that he confronted Michael Francke to get his records back
5 from the Dome Building. And later, I believe it was the
6 next day, he told me that it was done while he was -- he had
7 been caught breaking into Michael Francke's car and that
8 Michael Francke had decided to take him back to the Dome
9 Building to make a phone call and that he tried to get away
10 from Michael Francke and during the struggle he stabbed
11 Michael Francke.

12 Q Now you have indicated that on a later date he
13 told you he committed the murder again, and how many
14 different times did you talk to him and how many different
15 times did he tell you that he murdered Michael Francke?

16 A I believe I talked to him either four or five
17 times that I interviewed him. A couple of times at my
18 request, and a couple of times we responded to his request
19 to talk with us.

20 Q Over what period of time are we talking about;
21 days, weeks, months?

22 A Between the 4th and the 13th of April.

23 Q Did you talk to him after April 13th?

24 A I believe -- not that I recall.

25 Q During each of the meetings that you had when

E. R.-796

Randy C. Martinak D -

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1 there was interviews with John Crouse, were other officers
2 present?

3 A Yes.

4 Q And who were those officers?

5 A Most of the time it was Detective Ken Pecyna.

6 Q Is it correct that at some point, apparently
7 right around April 13th of 1989, you were no longer asked to
8 continue your investigation of John Crouse?

9 A That's right.

10 Q Who asked you to discontinue your investigation
11 of John Crouse?

12 A It wasn't that I was asked to discontinue, it
13 was that I was transferred. I was working as an
14 Investigator in the Criminal Justice Division at the time
15 and I was promoted to Assistant Chief Investigator and asked
16 to take over the Intelligence Unit which was just being
17 formed. So, at that time I left that investigation to go to
18 other duties in the Criminal Justice Division of the
19 Department of Justice.

20 Q Prior to going on to other duties, based on your
21 police background, experience and interviews with John Lee
22 Crouse, did you form an opinion as to whether or not he was
23 being truthful when he confessed to you?

24 MS. MOORE: Your Honor, I object to that as
25 irrelevant.

E. R. -797

Randy C. Martinak D -

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1 MR. ABEL: It's an offer of proof, Your Honor.

2 MS. MOORE: I don't care if it is an offer of
3 proof, it's irrelevant. We still follow the Evidence Code.
4 There's no relevance of his opinion as to whether he did or
5 did not believe Johnny Lee Crouse when he made the
6 statement. He couldn't testify to that in front of a jury,
7 it's not relevant in an offer of proof.

8 THE COURT: I'll sustain the objection.

9 MS. MOORE: Thank you, Your Honor.

10 MR. ABEL: Detective, during the course of your
11 numerous interviews with John Crouse, did he provide you
12 with certain information pertaining to how the murder took
13 place, what happened, and what kind of a knife was used,
14 this type of thing?

15 THE WITNESS: Yes.

16 MR. ABEL: Would you relate to us, please, the
17 information that he -- that was related to you by Mr. Crouse
18 as to what happened on January 17th, 1989?

19 A The first -- the first story that he gave me was
20 that he had -- he had been -- the reason I interviewed him
21 was because -- that he had come forward to his parole
22 officer and placed himself at the scene, said that he had
23 observed the crime. And so my first interview or first
24 contact with him was a discussion of what he said he had
25 observed. At the end of that discussion, I advised him that

1 I thought he was telling a lie and that I didn't believe him
2 and I talked to him about how personal it was to stab
3 somebody, and that you couldn't do it from across the
4 street, you had to be close and look the person in the eye.
5 That seemed to bother him and after a while he asked me --
6 there was another investigator sitting in the interview room
7 with me, and that was Kathryn McLaughlin from my office or
8 from the Department of Justice and, at that time, he told me
9 that he had not told me the truth and that he wanted to tell
10 the truth, but he wanted to talk to somebody that he thought
11 he could trust. And I asked him who that would be. At that
12 time he told me that it would be Detective Glover of the
13 Oregon State Police, or Captain Forbes from Corrections
14 Division. So, I at that time asked Corrections Officer King
15 to step into the room and stay with Mr. Crouse while I made
16 contact with Karl Nelson or someone in charge of the
17 investigation in order to get Detective Glover or Captain
18 Forbes to that room to be present. I was advised that
19 Detective Glover was out of town or on vacation. Eventually
20 Captain Forbes came to the room and, at that time, Detective
21 Pecyna also came into the room and brought a tape recorder.
22 He was, again, advised of his rights and his conversation
23 was taped then and, basically, as I said, he told me that he
24 had been paid to kill Michael Francke. He had been offered
25 three hundred thousand dollars by an individual dressed in a

1 three piece suit, had made contact with him outside his
2 parole officer's office. And after that, the end of that
3 tape recording, I again told him that I thought he wasn't
4 telling me the truth. And he then told me that he had -- he
5 would -- he didn't feel comfortable talking about it. He
6 would feel more comfortable if he could just sit down and
7 write what happened. And so he was allowed to go back to
8 the Penitentiary.

9 The next -- well, there were some other things that
10 were done. He consented to give us blood and hair samples
11 and -- and he also consented to give us some of the clothes
12 that he said he was wearing the night the crime occurred.
13 And so he was transported out to Brown Road where some of
14 these clothes were retrieved and he was taken to the Salem
15 Hospital where blood was drawn. And then he was returned to
16 the Penitentiary.

17 Eventually, after I believe he was allowed to contact
18 a girlfriend, his request was that he wanted to talk to his
19 mother, he wanted to talk to his brother. And I told him
20 that I would work on making those arrangements, and so those
21 arrangements were made for the next day.

22 On the next day he was brought back over and again
23 interviewed at which time he talked about confronting
24 Michael Francke to get his records back. And I forget all
25 -- I would have to look at the exact statement. It was also

1 tape recorded. And, in addition, he told -- we talked about
2 other crimes.

3 And then, I'm not sure which day it would have been,
4 within a couple of days we actually took him back out to the
5 scene. So, I believe it was on the evening of the 5th that
6 we took him back out to the Dome Building because during the
7 interview we showed him an aerial photograph of the Dome
8 Building area and he sketched on that photograph the
9 direction of travel that he claimed he took after the crime
10 occurred. When we arrived back out at the Dome Building, at
11 that time he told me that he had been mistaken about the way
12 that he had left and he described the route that he took
13 when he left the scene of the crime.

14 Q Let me interrupt you just a little. You notice
15 the model here of the Dome Building and grounds. When he
16 corrected the path, which direction did he say -- did he
17 tell you that the stabbing took place in this area of the --
18 this area of the circular parking area in front of the Dome
19 Building?

20 A Yes.

21 Q Did he tell you which direction he ran after the
22 incident?

23 A Yes. The original arial photograph he told me
24 that he had gone from the parking circle across the lawn and
25 around the south side of the hospital which would be on the

E. R.-801

Randy C. Martinak D -

9528

1 other side of the street.

2 Q Over --

3 A West of the Dome Building. No. Straight out
4 probably from the front of the building. He drew a dotted
5 line that went around the south end of the hospital on the
6 other side of the street west of the Dome Building. When we
7 got out to the scene, he kept walking out the driveway which
8 would be the north driveway from that circle.

9 Q This driveway right here?

10 A Yes.

11 Q He told me he had run out that driveway, across
12 the street, up by a big -- what he said was a big -- that
13 big blue thing which was a generator that's parked alongside
14 the hospital.

15 Q That's the old Salem General Hospital?

16 A I believe it is. And that he had gone through
17 some trees and up on to a driveway and that he had stopped
18 and looked back. I asked him because previously we had been
19 asking him where he last saw Michael Francke and he told me,
20 he said, "I stopped and looked back but you keep asking me
21 where Michael Francke was, I wasn't looking for Michael
22 Francke, I wasn't looking to see where he was at. I was
23 looking to see if I was being chased. And when I wasn't,
24 then I went on into the parking lot and on out and back to
25 my apartment."

E. R.-802

Randy C. Martinak D -

9529

1 Q Did he talk to you about certain things like,
2 for instance, the type of knife he used?

3 A I believe that he did tell us that it was the
4 knife that he had turned over to Detective Mason and
5 Detective Mouery. Detective Mason with Salem Police
6 Department, Detective Mouery with the Oregon State Police
7 during a consent search of the residence of Penny Ficke
8 which was a place that he had lived for a while. And I
9 don't recall the exact date that that took place, but I
10 think it was right around February 15th or February 16th.
11 And he said that it was a single edged hunting knife. And
12 he claimed that that particular knife was the one that he
13 had used.

14 Q Did he indicate to you which hand he held the
15 knife in when he stabbed Michael Francke?

16 A He said that the initial struggle was -- that he
17 had the knife in his left hand and he -- I believe in his
18 statement he tells me that he kept his power hand free.
19 When I asked him what that meant, he said he kept his right
20 hand free because he had -- he had started to walk back
21 towards the Dome Building with Michael Francke and Michael
22 Francke had his hand on his shoulder and he said that he --
23 when he felt the grip relax a little bit he tried to shake
24 Michael Francke off and that Michael Francke had hit him so
25 then he said that he hit Michael Francke back.

1 Q Where did he say he hit Michael Francke?

2 A I asked him -- when he said he hit him back, I
3 said, where did you hit him? He said I -- I hit him in the
4 face. I said how did you hit him in the face? He said it
5 was round-house right to the face. He said then, that
6 didn't seem to affect Michael Francke and Francke kept
7 coming after him trying to get a hold of him again, so he
8 reached back and got a knife and then he indicated that he
9 had the knife in his left hand and used his right hand to
10 swing at Michael Francke while he slashed at him with his
11 left hand to get him to back off. And he said that that did
12 not deter Mr. Francke. That he kept coming after him, kept
13 trying to get a hold of the knife and, at one time, he did
14 knock the knife out of his hand. When he went to the ground
15 to get the knife, that Michael Francke hit him in the back
16 of the head. He said he came up with the knife, and he
17 thought to himself that he had to figure out some way to get
18 away and he figured the best way to do it was just to try to
19 stick Michael Francke in the center of the chest. He said
20 he started to come down with the knife and Michael Francke
21 partially blocked and he hit him in the chest with the
22 knife. I asked him where in the chest, and he said he
23 didn't -- he didn't recall other than he was aiming for the
24 center of his chest. And that his hand had been deflected.
25 Says -- but he said I knew I hit him hard. And I said what

1 do you mean by you knew you hit him hard? He said, because
2 the wind went out of him and he just quit fighting. He just
3 stood there and he said either Oh, God or Oh, my God. He
4 said, at that point I just pulled the knife out, turned and
5 ran.

6 Q And then he ran into the direction which was
7 west away from the front of the Dome Building, is that
8 right?

9 A Yes.

10 Q Did the federal authorities later get involved
11 in the investigation of this murder?

12 A I believe there was some involvement, yes.

13 Q And did you happen -- have occasion to talk to
14 Mr. Crouse following an interview with the federal
15 authorities?

16 A I was present after the interview, yes. At
17 Salem Police Department.

18 Q Did Mr. Crouse make a statement to you at that
19 time?

20 A Yes.

21 Q What did he say?

22 A He just said at least I proved that I didn't
23 mean to do it.

24 Q Do you have any personal knowledge of why the
25 investigation as far as John Crouse was concerned was

1 terminated?

2 A No, I do not. I know that -- I don't believe it
3 was terminated. I know that after I left the investigation,
4 that there were other investigators that were assigned to
5 follow up leads and to try to verify that his statement was
6 truthful or not truthful.

7 Q Did Mr. Crouse tell you whether or not at the
8 time of the altercation Mr. Francke's automobile, car door
9 was open?

10 A He said that the door was open and that he was
11 leaning into the car. He said he was reaching for something
12 and he doesn't remember what it was when somebody grabbed
13 him by the shoulder and -- and he backed out of the car, and
14 he said come with me, we're going to make a phone call. And
15 they started to walk away. The door was left open.

16 Q That is all I have, Your Honor.

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CROSS EXAMINATION

BY MS. MOORE: Good morning, Mr. Martinak.

A Good morning.

Q To the best of your knowledge, were most of these interviews that occurred with Mr. Crouse tape recorded?

A I believe all of them were.

Q Okay.

A With the exception of the statements that were made out at the scene at the Dome Building. None of that was recorded. However, when we returned to District II headquarters a tape recorded statement subsequent to his visit to the Dome Building was taken.

Q Okay. And during the course of your interviews and contacts with Mr. Crouse, ultimately, he identified for you and turned over to you or Detective Pecyna or other detectives the clothing that supposedly he was wearing during the night that he supposedly killed Michael Francke, is that correct?

A He turned over Levis, boots, but he didn't -- he said that he had destroyed some of the clothing. And some of the clothing that he later described in a tape recorded statement was never located, to my knowledge.

Q Okay. And he indicated I believe in one of the

E. R.-807

Randy C. Martinak C -

9534

1 interviews that the shirt he had on he burned, is that
2 correct?

3 A Yes.

4 Q But, supposedly, he gave you the pants and the
5 boots that he was wearing during the night that that
6 incident allegedly occurred, is that correct?

7 A Yes.

8 Q And also during the course of the interviews he
9 identified for you and Detective Pecyna the knife that he
10 says he allegedly killed Michael Francke with, is that
11 correct?

12 A Yes.

13 Q Do you recall these big overhead photographs
14 that Detective Pecyna and you used with Mr. Crouse when he
15 was initially describing where he ran on this particular
16 night?

17 A It was not a -- it was an eight by ten overhead
18 aerial photo of the Dome Building and the parking lot.

19 Q Okay. And do you recall those photographs?

20 A Yes.

21 Q Okay. Do you recall that prior to you and
22 Detective Pecyna conducting your first interview on April
23 4th of 1989, Mr. Crouse had previously been interviewed by
24 Detective Mason with the Salem Police Department about the
25 same subject matter?

1 A I believe that he and Detective Mouery had
2 interviewed him and I believe Detective Pecyna had also
3 talked to him.

4 Q Okay. And I believe you indicated that that was
5 somewhere around February 15th or 16th of '89 that that
6 occurred?

7 A I believe that is correct.

8 Q And were you aware at that time that Mr. Crouse
9 indicated that he did not kill Michael Francke?

10 A Yes. I believe that he said that he had
11 observed somebody beating on Michael Francke. There were
12 five individuals. Two of them had run to one car, two had
13 run to another car, and he chased the fifth subject,
14 hispanic subject who ran or walked with a limp all of the
15 way to Market Street.

16 Q Okay. And isn't the correct -- actually, he
17 didn't indicate that the five people attacked Michael
18 Francke, he just indicated that he saw something happen in
19 front of the Dome Building, is --

20 A He said that he saw five people attacking one
21 person and when that person went down is when these people
22 ran, yes.

23 Q And during the course of that interview, isn't
24 it true he basically indicated that -- or offered no
25 explanation but indicated that for whatever reason he chose

1 to chase one of the five individuals for three and a half
2 miles, is that correct?

3 A That is true.

4 Q And is it correct that he indicated that this
5 individual that he was chasing for three and a half miles
6 had a limp, but despite that fact, he wasn't able to catch
7 up with this individual?

8 A That's right.

9 Q Okay. And isn't it true that he indicated that
10 for whatever reason, and he could offer no reason, that he
11 was continuing to try to look for this individual that he
12 chased for three and a half miles that night during the
13 course of subsequent interviews?

14 A I don't recall him saying he was still looking
15 for him. I recall distinctly that I asked him why. Why he
16 chased the guy that ran around the Dome Building, and his
17 response to me was, "I very well -- I couldn't catch the
18 guys that were in the car."

19 Q Okay. So not a very plausible explanation?

20 A No.

21 Q And isn't it true that it's in the course of
22 that interview that Detective Mouery and Detective Mason
23 wound up doing a consent search on the room that he was
24 living in at that time and recovered two knives and one is
25 the one he ultimately tells you and Detective Pecyna is the

E. R.-810

Randy C. Martinak C -

9537

1 knife that he used to kill Michael Francke?

2 A I believe that they took two knives, a sheath
3 for one of those knives, and two coats or jackets.

4 Q And isn't it true throughout that entire
5 interview on February 15th, 1989, he indicated that he did
6 not kill Michael Francke?

7 A I don't believe he admitted that he did that.

8 Q Okay. And then on April 4th, 1989, when you
9 have your first interview with Mr. Crouse after Detective
10 Mason's interview, isn't it true that he no longer is
11 telling the story about the five people in front of the Dome
12 Building and instead tells a story about a guy named Juan
13 that just happens to be sitting outside his probation
14 officer's office a couple days prior to the 17th of January,
15 and just happens to ask him if he wants to earn three
16 hundred thousand dollars, fifteen hundred up front, the
17 balance after it's done, and basically doesn't even tell
18 Mr. Crouse at that occasion what he wants him to do? Just
19 asked him if he's interested in helping him out?

20 A The first hour of that interview was him
21 basically telling me this same story about the five hispanic
22 subjects. And I questioned that story very strongly because
23 I thought it was fictitious. And then when he became --
24 when we quit talking about that and talked about stabbing
25 someone, then, after becoming somewhat emotional and asking

E. R.-811

Randy C. Martinak C -

9538

1 to talk to other people during the time, by the time Captain
2 Forbes got there and everything, then the story that he told
3 was this story about Juan, the hispanic subject in a three
4 piece suit that offered him three hundred thousand dollars.

5 Q Okay. Right. And that was a couple days prior
6 to the 17th of January, is that correct?

7 A I believe that he -- he said he had to report to
8 his parole officer, he was on intensive supervision and he
9 had to report every Tuesday and Thursday, and that this
10 person -- the first contact that he had with Juan was -- was
11 on the 12th, which would be the week prior. And then on the
12 17th, again, he just ran into him at this service station up
13 the street from the Dome Building.

14 Q Just in -- coincidently ran into Juan, no
15 prearranged meeting?

16 A That's right.

17 Q Just coincidently ran into Juan at some gas
18 station near the Dome Building on January 17, 1989, is that
19 what he told you?

20 A Yes.

21 Q Is it true at that point as the story goes Juan
22 wanted to hire him for three hundred thousand, fifteen
23 hundred up front to go take care of Michael Francke?

24 A Right.

25 Q Isn't that correct?

1 A Right.

2 Q And isn't it correct at that point he tells you
3 he doesn't even know where to find Michael Francke, and Juan
4 says just go on down the street to the Dome Building and you
5 will find him there, is that correct?

6 A I believe he said he told him where the office
7 was and -- on the previous meeting, the 12th. And that --
8 and that he, in fact, went down there and stood there and
9 couldn't find -- that Michael Francke had -- was coming out
10 of the Dome Building.

11 Q And basically indicated he just sort of stood
12 around, smoked a bunch of cigarettes and waited for
13 Mr. Francke to come out of the building?

14 A Yes.

15 Q And isn't it true at that point in time he
16 basically described the clothing that he was wearing?

17 A Yes.

18 Q And he described the time on January 17th, 1989,
19 as seven p.m.?

20 A Right.

21 Q He indicated that he was wearing blue jeans,
22 boots, and a green jacket, is that correct?

23 A Yes.

24 Q And he indicated that he left a bunch of
25 cigarette butts at the scene, is that correct?

1 A He said he -- yeah, he smoked at least two and
2 probably more.

3 Q And isn't it true he indicated basically where
4 he was standing when he was smoking these cigarette butts?

5 A Yeah. I had trouble understanding where he
6 said. I never got for sure where he said he was standing,
7 but the approximate area, yes.

8 Q And isn't it true that he indicated that he was
9 wearing a hat that night, a cap?

10 A I believe that he said that he had a cap with
11 him. I don't know that he said he was wearing it.

12 Q Okay. I presume it would be on the tape
13 transcript.

14 A Yeah, it should be.

15 Q Okay.

16 A I know that he said he lost it. So --

17 Q Okay. And in the course of this transcript he
18 also talks about this knife and identifies the knife that
19 Mason and Mouery seized as the knife he used, isn't that
20 correct?

21 A Yes.

22 Q Doesn't he indicate in the course of that
23 interview that basically he contacted Mr. Francke and winds
24 up stabbing him with his left hand in an upward motion to
25 the heart?

E. R.-814

Randy C. Martinak C -

9541

1 A That's the way he gestured during the first
2 interview, yes.

3 Q Okay. And -- and then isn't it true that he
4 indicated that he started running away from the scene and,
5 at that point, indicates he is starting to run, in fact,
6 east around the Dome Building and towards Park Avenue, isn't
7 that correct?

8 A Yeah. He said he started to run towards Buster
9 Burgess' residence and then changed his mind.

10 Q And that would have been on Park Street which is
11 the street basically --

12 A Right.

13 Q All of the way to the east of the hospital
14 grounds, is that correct?

15 A Right.

16 Q And then isn't it true he indicated that he
17 decided he wanted to go back to the Monterey Apartments, bad
18 idea going east, turns around, comes back towards Michael
19 Francke's car, at that point pushes Michael Francke up
20 against Michael Francke's car?

21 A Yes.

22 Q And then indicates that he runs west in the
23 direction of the Monterey Apartments?

24 A Right.

25 Q And isn't it true that he indicates this kind of

E. R.-815

Randy C. Martinak C -

9542

1 path of travel with a pen on one of these overhead
2 photographs?

3 A Yes, he did.

4 Q And isn't it true during the course of that
5 interview with the use of the aerial photograph that John
6 Lee Crouse indicates that Michael Francke's car was located,
7 in fact, in a location on the parking circle that we know
8 from the criminal investigation it was not located at?

9 A I don't recall that, but it could be. If it is,
10 it's on the tape.

11 Q Okay. Or it could be on the overhead?

12 A Yes.

13 Q Okay. Now, you indicated that you also
14 interviewed Mr. Crouse on April 5th of 1989, is that
15 correct?

16 A I believe it is.

17 Q Okay. And was that interview also taped?

18 A I think -- I think there was a taped interview
19 taken during almost all of the contacts that I had with him.
20 However, there was other conversation prior to the tape
21 recording or conversation after the tape was shut off, but
22 the majority of it is tape recorded, yes.

23 Q Well, okay. April 5, 1989, some of what he
24 indicated to you and Detective Pecyna about this alleged
25 crime was tape recorded?

E. R.-816

Randy C. Martinak C -

9543

1 A Yes.

2 Q Okay. And during the course of that interview,
3 isn't it true that he changed the method and manner of
4 inflicting the wounds on Michael Francke during the course
5 of that interview?

6 A I believe that he was asked about it and -- and
7 there are changes, yes.

8 Q Okay. And isn't it true that during the course
9 of that interview, and I think you have already testified to
10 this, that Juan and the three hundred thousand is gone from
11 that scenario?

12 A Yes.

13 Q Okay.

14 A In fact, I asked him why he told me that story.

15 Q Okay. And then, now, the story basically winds
16 up being that it was a car clout?

17 A In between -- it was kind of a heated discussion
18 where I accused him of lying about Juan and then he said,
19 okay, I did it because I was tired of being a prisoner and I
20 was tired of -- of not feeling like I was out of jail and so
21 I went down and I personally confronted Michael Francke when
22 he came out of the building and told him, all right, you're
23 going to go back in there and give me my records back and
24 I'm leaving the state. And during that altercation he
25 stabbed Michael Francke.

1 Q And that story didn't last too long?

2 A No.

3 Q And then he went on to the car clout theory?

4 A Yes. Basically, the first indications were
5 written discussions that I saw in regards to that.

6 Q And during the course of that interview, do you
7 recall him talking about the fact that he stabbed Michael
8 Francke five times with his left hand?

9 A I don't know that he said five times, but it may
10 be. I know this, he said he was slashing at him.

11 Q Okay.

12 A The first -- the first statement was that he was
13 sure that he had slashed him and may have cut him while he
14 was pulling the knife away, he believed. I think the first
15 part of it was either two or three times, and then the next
16 day it was maybe as much as five times. And he thought he
17 got him on the arm as well as possibly in the stomach.

18 Q Okay. And I assume the taped transcript would
19 tell us all what Mr. Crouse precisely said?

20 A Yes.

21 Q But would you have any quarrel if I were to
22 suggest that he indicated that he stabbed Michael Francke in
23 the stomach and that he cut him on the arms and the hands
24 and specifically cut him on the right upper forearm in the
25 course of this taped transcript?

1 A That's probably true.

2 Q And indicated that all of these stab wounds were
3 with his left hand?

4 A Yes.

5 Q Okay. And during the course of this interview
6 did he also tell you how he got into the car, basically?

7 A Yes.

8 Q And isn't it true that basically he indicated
9 that he got into the car by using a piece of wire?

10 A Yes.

11 Q And ultimately isn't it true that he fashioned
12 either on this particular day or a later date for you and/or
13 Detective Pecyna a similar wire?

14 A Yes.

15 Q So that the detectives could attempt to see if
16 he could get into Michael Francke's car in the way that
17 Mr. Crouse indicated and demonstrated?

18 A Yes. That is correct.

19 Q And during the course of this second interview,
20 isn't it true that you used another overhead or another
21 overhead was used and, once again, Mr. Crouse demonstrated
22 or attempted to demonstrate how he ran or what direction he
23 ran in on that particular occasion?

24 A I don't recall that, but we may have. I know we
25 -- we talked several times about which way he went back to

E. R.-819

Randy C. Martinak C -

9546

1 his apartment.

2 Q Okay. And then do you recall another interview
3 basically on April 6th of 1989?

4 A 6th? Probably.

5 Q And that would be an interview where he
6 indicated basically that he wanted to add one more article
7 the clothing to what he was wearing that night?

8 A Yes. Yes.

9 Q And indicated that he had this long blue
10 sweatshirt on?

11 A Blue almost black hooded, zipper front
12 sweatshirt.

13 Q And during the course of that interview, again,
14 identified that knife or -- or indicated, again, that the
15 knife that Mason had seized was, in fact, the knife that he
16 supposedly killed Michael Francke with?

17 A Yes.

18 Q And I think on that occasion he actually made
19 the wire for all of you?

20 A Yeah. Ken and I.

21 Q So that you could --

22 A We were -- I believe we were in the Major's
23 office at District II.

24 Q So that you could test that part of his story on
25 Mr. Francke's car, is that correct?

E. R.-820

Randy C. Martinak C -

9547

1 A That's right.

2 Q And then on April 9th 1989, was there another
3 interview conducted with Mr. Crouse where, again, he
4 indicated you guys have the right knife, and indicates that
5 he was not wearing gloves at the time that he broke into
6 Michael Francke's car?

7 A That's right.

8 Q And then were you aware on April 11th, 1989,
9 that in a conversation with Detective Glover he recanted his
10 prior confessions and indicated that he had not killed
11 Michael Francke?

12 A I was in Nebraska at the time, but I was advised
13 of that when I got back. And I believe Detective Pecyna and
14 Detective Glover told me that.

15 Q Okay. And then were you present during the
16 April 13th, 1989, interview with Mr. Crouse where he
17 recanted his recantation? Basically went back to saying he
18 had killed Michael Francke?

19 A Basically I was advised on the 13th by Pecyna
20 that Mr. Crouse wanted to talk to he and I. So, we had him
21 brought over from the Penitentiary and, at that time, he
22 told us that he had told Detective Glover that he didn't do
23 it and that he wanted me to know that he did that because he
24 saw that Detective Glover did not believe him and he thought
25 there was a glimmer that he thought he could get away with

1 it. So, he told him that he didn't, but he wanted to tell
2 us that he couldn't, you know, live with the fact of getting
3 away with it so he wanted to talk to us about it and told us
4 that he had, in fact, lied to Detective Glover.

5 Q Okay. And then at that point in time are you
6 relieved from your responsibilities on the task force and
7 returned to take over that new position?

8 A It was not long after. I did a few other things
9 in regards to some of the -- trying to run down some of the
10 things that he said. And the only other contact I had with
11 him was later, just as a security measure, when he was taken
12 from the Penitentiary again.

13 Q Okay. And I believe that was on or about June
14 15th of 1989. Were you aware that he was interviewed on
15 that date, again, by Detective Mason?

16 A Yes.

17 Q And on that particular occasion indicated that
18 he did not kill Michael Francke. Indicated that there might
19 be some -- he might have some knowledge about it, indicated
20 there might be some evidence buried somewhere. And is that
21 what you assisted basically his security in, to take him out
22 to basically find that "evidence," quote unquote?

23 A Uh-huh.

24 Q And were you aware that the State Police
25 subsequently dug in the area that Johnny Lee Crouse took

E. R.-822

Randy C. Martinak C -

9549

1 them to and they never located anything that Mr. Crouse said
2 was there?

3 A I'm aware of that.

4 Q And were you aware that about a week later there
5 was another interview with Mr. Crouse in which he had
6 indicated that he could probably produce two witnesses to
7 assist the State Police but, in fact, he never did produce
8 any witnesses or any further information?

9 A I was not aware of that.

10 Q And were you aware that he was finally
11 interviewed on November 30th, 1989, by the State Police and,
12 again, he denied killing Michael Francke at that point in
13 time?

14 A I haven't read any of those. I am aware that --
15 that he was interviewed subsequent to that, but I'm not
16 aware of exactly what was said.

17 Q Okay. Thank you, Mr. Martinak.

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REDIRECT EXAMINATION

BY MR. ABEL: Detective, based on your experience in criminal investigations, is it unusual for persons to tell various stories about their criminal conduct or what transpires during the course of the crime?

A No.

Q And Ms. Moore has gone through the whole scenario now about the various stories that he told you. Ultimately, he told you -- gave you facts that were consistent with what you knew about the crime scene, is that right?

A He told me some things that appeared to match what I saw in photographs and at the scene, yes.

Q Would you tell us, please, what those things that were consistent with the crime scene were?

A The one thing that I thought was consistent was the round-house right to the face. And I was not present during the autopsy of Michael Francke, I only observed photographs and had noticed the bruising and laceration in the corner of his left eye which I thought was consistent with somebody striking him there.

I did not talk with any of the witnesses who were -- were interviewed in regards to what they saw happen that night at the Dome Building, but I was told that his

E. R.-824

Randy C. Martinak ReD -

9551

1 statement at the scene was consistent with an eye witness's
2 account of hearing a pained expression, seeing two persons
3 turn away from each other and one person following the path
4 of travel that -- that John Crouse pointed out in leaving
5 there.

6 Q Would that be Wayne Hunsaker you're referring
7 to?

8 A I believe that's the name.

9 Q What other things were consistent with what you
10 knew about the crime scene?

11 A (No response)

12 Q Did he tell you, for instance, that he stabbed
13 Michael Francke in the arm and in the heart?

14 A Yes.

15 Q Can you think of any other things that he told
16 you that were consistent with the crime scene?

17 A I don't believe there was -- there was anything
18 else that was -- that strikes me as being --

19 Q Thank you.

20 That is all I have.

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E. R.-825

Randy C. Martinak ReC -

9552

RECROSS EXAMINATION

BY MS. MOORE: Mr. Martinak, isn't it true basically that in his initial stories he told you -- let's go back to Mr. Abel's specific question, apparently, one of the things that you indicated was that some of what he said was consistent with what an eye witness said they saw at the scene of the crime. Are you aware that the eye witness described where they saw this man run?

A That's what I was told.

Q Are you aware that many of the stories that Mr. Crouse told were not, in fact, consistent with what the eye witness said they saw as the direction of travel of the assailant?

A I'm not aware of that.

Q And are you aware that the description of the clothing that Mr. Hunsaker gave on the assailant who run away was totally different than the description of the clothing that Johnny Lee Crouse said that he was wearing the night of the crime?

A I'm aware of that.

Q And were you aware that there was, in fact, no stab wound or slash wound on the right forearm of Michael Francke? Are you aware of that?

A I'm aware of that.

1 Q Are you aware there was no stabbing wound to the
2 stomach of Michael Francke?

3 A Yes.

4 Q You aware that Mr. Crouse indicated basically
5 that he had cut Mr. Francke on both hands and both arms and,
6 in fact, there were not cuts on both hands and both arms
7 that were revealed in the autopsy. Were you aware of that?

8 A I was aware there were wounds on his hands, but
9 I did not see the wounds and I'm not aware of what the
10 wounds were.

11 Q Are you aware that he indicated initially that
12 the heart wound was an upward stab wound to the heart with
13 his left hand? Are you aware of that?

14 A I believe that that was the initial statement.

15 Q That's fine. Initially, he said that?

16 A Yes.

17 Q And isn't it true that that is not an upward
18 tracking heart wound? In fact, the heart wound was slightly
19 downward?

20 A Yes.

21 Q Is that correct?

22 A Yes.

23 Q And are you aware that despite the best efforts
24 of numerous detectives, they were unable to break into
25 Michael Francke's car using the wire that Johnny Crouse

1 described was the wire that he described and using the
2 method that John Lee Crouse described was the method he
3 used?

4 A I'm aware of that.

5 Q Are you aware that the Crime Laboratory, in
6 fact, analyzed the knife that Johnny Lee Crouse insisted
7 over and over again that he supposedly killed Michael Francke
8 with and, in fact, that knife had no blood on it, no
9 indication of blood?

10 A That's what I was told.

11 Q They took the entire knife apart and found no
12 evidence of blood, is that correct?

13 A That is correct.

14 MR. ABEL: I'm going to object at this point.
15 If Ms. Moore is going to testify, she should take the stand.

16 MS. MOORE: This is a 104 hearing, number one,
17 and, number two, he has asked this individual the basis of
18 his opinion and why he felt this was consistent of the crime
19 scene. I'm just following up by using all of the things
20 that are not consistent with the crime scene and the body.

21 THE COURT: You may inquire in that regard.

22 MS. MOORE: Thank you, Your Honor.

23 Are you also aware that the Crime Laboratory analyzed
24 the knife that Mr. Crouse insisted that he killed Michael
25 Francke with and that knife does not demonstrate what they

1 call the general class characteristics of the weapon that
2 they indicate caused the wounds in the body and the slashes
3 in the clothing and the business cards that were found on
4 the body?

5 THE WITNESS: I'm aware that the GCC of the
6 knife is not consistent with the wounds.

7 MS. MOORE: And that's the knife that Mr. Crouse
8 insists that he killed Michael Francke with, is that
9 correct?

10 A That's -- that was the second statement, yes.

11 Q Okay. And, in fact, Mr. Crouse indicated on
12 numerous statements numerous directions of travel, but
13 basically many of the directions of travel that he indicated
14 were, in fact, wrong in comparison to what the eye witness
15 saw at the scene of the crime, is that correct?

16 A I'm aware of two. The initial one and the one
17 that he told when we were back out at the Dome Building. I
18 don't know how many times he described that. I know he was
19 asked numerous times about it.

20 Q And are you aware that, in fact, in one of those
21 scenarios where he indicates that he runs in the direction
22 of Park Street and then comes back and pushes Michael
23 Francke up against the car and runs back towards the
24 Monterey Apartments, are you aware, in fact, that the Crime
25 Laboratory found no evidence that Michael Francke had been

E. R.-829

Randy C. Martinak ReC -

9556

1 pushed against the car or created any smudges by being
2 pushed against the car?

3 A I'm aware of that.

4 Q And are you aware that when the Crime Laboratory
5 processed the clothing that you seized or you and Detective
6 Pecyna seized from Mr. Crouse, the clothing he indicated
7 that he was wearing on the night of this incident, at least
8 the pants and the boots, that they did further analysis on
9 those boots and the pants?

10 A I was aware that they could not find any sign of
11 blood on -- of human blood on the boots or the pants.

12 Q Okay. And are you aware that they did some
13 analysis of the coats basically that were seized by
14 Detective Mouery and Detective Mason when they -- when they
15 basically seized those knives, and there was no blood found
16 on those coats either?

17 A Right. And I'm sure that is the reason we took
18 hair samples. I'm sure they examined those to look for hair
19 fiber transfer, also.

20 Q And are you aware, in fact, they did do hair
21 comparisons based on the hair samples that you seized from
22 Mr. Crouse and, in fact, there were no hairs that were
23 matched up in this investigation with Mr. Crouse?

24 A I'm aware of that.

25 Q And are you aware, in fact, that they processed

E. R.-830

Randy C. Martinak ReC -

9557

1 the scene and particularly the area where Mr. Crouse said he
2 was standing and smoking cigarettes and, in fact, no
3 cigarette butts were located in that location?

4 A I participated in that search myself.

5 Q Okay. And, in fact, they also processed this
6 blue sweatshirt that Mr. Crouse ultimately says that he
7 thinks he was wearing along with the other clothing and they
8 found no blood on the sweatshirt either?

9 A I was not aware that the sweatshirt had ever
10 been recovered.

11 Q And, in fact, they did some fiber analysis based
12 on the many statements that Mr. Crouse gave them and, in
13 fact, were not able to match up any kind of fibers with
14 evidence that was found at the scene, is that correct?

15 A I have been told that, yes.

16 Q Okay. And, in fact, they fingerprinted him,
17 Mr. Crouse, and attempted to match his fingerprints either
18 with the car, the Dome Building, the house, any of the
19 fingerprints that were seized, any of the latent prints that
20 were seized in this investigation, and isn't it true they
21 weren't able to match any of his fingerprints to any of the
22 latents that were seized?

23 A I'm not aware of the totality of that. The
24 reason I know we took a set of fingerprints from him on all
25 of the friction skin was because there was an unidentified

E. R.-831

Randy C. Martinak ReC -

9558

1 print found on the car. It was for that comparison purpose.
2 I didn't know, I'm sure they probably compared them against
3 everything that they had.

4 Q And you're aware -- I think I may have already
5 asked you this, if I did, I'm sorry, but, you're aware that
6 they, in fact, dug in the field looking for the buried
7 clothing and didn't locate anything?

8 A I was not present, but I heard that it was done.
9 Yes.

10 Q Okay. And are you aware that Dr. Lewman, the
11 pathologist that conducted this autopsy, indicates that
12 basically in terms of the wounds that he found on Michael
13 Francke's body that they are not consistent necessarily with
14 a left-handed stabbing scenario?

15 A I was aware of that. Yes.

16 Q Thank you, Mr. Martinak.

17 MR. ABEL: Nothing further.

18 THE COURT: You may step down.

19 Thank you.
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1 MR. ABEL: Your Honor, that concludes our offer
2 of proof.

3 THE COURT: Okay.

4 MS. MOORE: Your Honor, obviously, we're going
5 to want to put on some evidence for the purpose of the
6 record. And what I propose doing is I have got copies of
7 all these transcripts of all of the taped statements plus
8 one police report that was not taped and, therefore, the
9 only substance or the only way -- the only form it is in is
10 in the form of a police report, and out in the hallway I
11 have all of the tapes that go with the taped transcript. I
12 would propose merely marking all of these for appellate
13 purposes. This is an offer of proof, and making them a part
14 of the record at this point in time so that -- for purposes
15 of appellate review. We have a complete and full copy of
16 each one of these statements.

17 THE COURT: Okay.
18 You're offering those?

19 MS. MOORE: Yes.

20 MR. ABEL: They're obviously not admissible,
21 Your Honor, I don't think. She has had her opportunity to
22 cross examine the only witness. She has covered in detail
23 the -- all of the things that were done, all of the various
24 statements that Mr. Crouse made. These documents are not
25 the best evidence. They're cumulative and the record speaks

1 clearly as -- just because of the cross examination.

2 MS. MOORE: Your Honor, I have all of the police
3 officers in the hallway if we want to bring them in. They
4 have listened to the tapes and read the transcript. They
5 can testify that they're true and accurate representations
6 of the statements that were made by Mr. Crouse. I have a
7 right to put on evidence just as I have a right to cross
8 examine whatever witnesses he calls. And the bottom line is
9 I advised counsel yesterday in chambers with the Court
10 present that I intended to do this and the Court indicated
11 that it intended to receive this as evidence during the
12 course of these hearings. This is basically an offer of
13 proof. So, I look at it more as a 104 type hearing in the
14 sense of the evidence -- rules of evidence and it's merely
15 for appellate purposes for review of the record up the
16 street. So, I don't think there is -- I don't think I even
17 need to put on the cops, basically, but if the Court wants
18 me to, this is, in fact, the transcript and the tapes of the
19 actual conversations we have been talking about. I have
20 every right to cross examine whatever witnesses Mr. Abel
21 chooses to put on. But I also have the right to make a
22 record myself for appellate purposes. And it seems to me
23 and I indicated to counsel and the Court yesterday in
24 chambers that the most accurate record here for any purpose
25 whether we had our 104 or 804 hearing or for an offer of

1 proof is the actual tapes and transcripts of what this
2 individual said on these -- all of these dates. In
3 addition, Mr. Martinak couldn't testify specifically about
4 what John Lee Crouse told Detective Pecyna on February 15,
5 1989, because he wasn't present for this interview and he
6 couldn't specifically testify to what John Lee Crouse told
7 Detective Mason on June 15 of 1989 and June 22nd, 1989,
8 because he wasn't present, nor could he tell the Court what
9 John Lee Crouse testified to on November 30, 1989, to
10 Detective Pecyna, he wasn't present for that interview,
11 either.

12 MR. BOSTWICK: Your Honor, I fail to see the
13 objection by Mr. Abel. If this offer of proof was, in
14 essence, if the Court was going to allow Mr. Abel to do
15 something, we obviously -- we're going to have the
16 opportunity to rebut that in whatever manner that we would
17 be allowed under the rules of evidence. And if the Court
18 was going to allow Mr. Abel to put Mr. Martinak on at some
19 point in trial or whatever and elicit the testimony he did
20 elicit from Mr. Martinak, we certainly would have been
21 allowed to cross examine him. We certainly would have been
22 allowed to put in the best evidence of these interviews, and
23 that is the transcript and the tapes from the evidence.

24 THE COURT: I would allow you to put on
25 evidence. I think his objection is you're not entitled to.

1 I would overrule it and let you. But the issue becomes one
2 of, again, you have all shared discovery, nobody has
3 identified these as being these tapes and that they're
4 accurate. Again, the rules of evidence. If they will
5 stipulate that those are, in fact, the tapes and the
6 transcript of the tapes, then they would be admitted. If
7 they're not going to stipulate, I think somebody has to
8 identify them as being.

9 MR. BOSTWICK: We're prepared to do that.

10 MR. ABEL: Your Honor, I have reviewed all of
11 the transcripts. In fact, I just put my book away. If they
12 will represent to the Court that what they're talking about
13 is the transcript I was provided during discovery, I'll have
14 no objection.

15 THE COURT: Okay. All right.

16 MS. MOORE: All this has been given in discovery
17 and they have had an opportunity to listen to the tapes that
18 have been in evidence from the beginning. Basically, it is
19 the transcripts and, as I said, the tapes are out in the
20 hall. I can get this all marked with your judicial
21 assistant if you want. We're talking about the tapes and
22 the transcript of the interview on February 15, 1989.

23 The tapes and transcript of the interview on 4/4 of
24 '89.

25 The tapes and transcript of the interview on 4/5 of

1 '89.

2 The tapes and the transcript of the interview on 4/6
3 of '89.

4 The tapes and the transcript of the interview on 4/9
5 of '89.

6 A police report pertaining to a statement that was not
7 taped on 4/11 of '89.

8 The tapes and the transcript of the interview on 4/13
9 of '89.

10 The tapes and the transcript from the interview on
11 6/15 of '89.

12 The tapes and the transcript of the interview on 6/22
13 of '89, and tapes and transcript of the interview on
14 November 30th of '89.

15 THE COURT: Based on counsel's statement, I'll
16 admit those subject to his review to make sure they are, in
17 fact, exactly what they purport to be. He has said if they
18 are, he has no objection and they will be admitted. But I
19 think he ought to have the chance to review them and make
20 sure they are.

21 MS. MOORE: And, Your Honor, my -- I guess my
22 position on this -- on this hearing or offer of proof this
23 morning is that I don't envision it basically as a situation
24 where the state has to call witnesses. It merely needs to
25 be on the record for appellate purposes for review. And

1 that's what I intended, basically, to do this morning was
2 simply present to the Court some additional facts for
3 appellate purposes. If the Court is not comfortable with
4 the state proceeding that way, then I think I'll need a
5 quick recess to get some witnesses together that I want to
6 call to put some additional evidence on the record.

7 THE COURT: I'm not sure I understand what you
8 just said.

9 MS. MOORE: Well, we now have the transcripts
10 and we have Mr. Martinak's testimony but, in fact, I want to
11 put on the record basically evidence to indicate that, in
12 fact, detectives of the Oregon State Police attempted to
13 break into Michael Francke's car using the wire in the
14 method that Johnny Crouse told them that he used and were
15 unable to do that.

16 And I want to put on evidence from the Crime
17 Laboratory to indicate that, in fact, they processed Johnny
18 Crouse's boots and pants and jacket and sweatshirt and found
19 no evidence of blood on any of the items.

20 That they processed the knife that he insisted that he
21 used when he allegedly killed Michael Francke and, in fact,
22 processed it twice for blood, took it apart entirely and
23 found no blood on it.

24 That they processed his hair and compared it with all
25 hair seized in the investigation and made no match of that.

1 That they located no cigarette butts at the scene
2 where Mr. Crouse said he was standing and waiting and
3 smoking cigarettes while he was waiting for Michael Francke
4 to leave the building.

5 That they processed the knife that he insisted that he
6 used and did stab tests as they have with other knives in
7 this case and the class characteristics of the knife that
8 Mr. Crouse insisted he used against Michael Francke were, in
9 fact, not consistent with the class characteristics of the
10 knife they identified as the weapon that killed Michael
11 Francke. And, in fact, that knife was not consistent with
12 the clothing or the stab cuts in the business cards.

13 That they processed fibers that were seized and they
14 indicated, again, no match with the fibers that were located
15 in the processing of the crime scene.

16 That the I.D. Bureau processed John Lee Crouse's
17 fingerprints and compared them to any and all latent
18 fingerprints that were seized from the Dome Building, the
19 house or throughout the investigation and there was no match
20 of John Lee Crouse on any of the fingerprints.

21 And a detective did, in fact, go out to the field that
22 John Lee Crouse took them to where supposedly there was some
23 evidence buried and they rented a backhoe, dug throughout
24 the field and located no evidence, no clothing, nothing
25 buried in the area that John Lee Crouse indicated that the

1 items were buried.

2 And, in fact, Dr. Lewman's testimony, I think the
3 Court already has it before it, but, obviously, Dr. Lewman's
4 testimony does not -- and the pictures from the autopsy do
5 not substantiate Mr. Crouse's version of five stab wounds
6 including the right forearm, the stomach, and wounds on both
7 arms and both hands.

8 And my position basically is in an offer of proof that
9 we can -- that we're making a record for appellate purposes
10 and that, basically, we can do it in that fashion. If the
11 Court is not comfortable with that, then I'll probably want
12 to get some witnesses in here just to testify to what I
13 articulated on the record this morning.

14 MR. ABEL: Your Honor, I think she just did it.
15 For the purposes of this hearing, I will stipulate that the
16 state processed the crime scene and found absolutely no
17 physical evidence.

18 MS. MOORE: Well, I'm not sure that's what I
19 just said, Your Honor, but if he wants to stipulate to what
20 I just read into the record, then I'm comfortable with
21 handling it that way.

22 MR. ABEL: Your Honor, it's so stipulated.

23 THE COURT: Saves my reading these two pages.
24 Thank you. All right. Anything else? God, that's a
25 wonderful word, "stipulate," isn't it? Anything else?

1 MR. ABEL: No, Your Honor. Thank you.

2 THE COURT: Ms. Moore, Mr. Bostwick, anything
3 else this morning?

4 MS. MOORE: If I could have just a quick moment,
5 Your Honor.

6 MS. MOORE: No. The state has nothing further,
7 Your Honor.

8 THE COURT: Okay. 1:30.

9 (Recess) 11:18 - 1:45

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I directed the Appellant's Excerpts of Record Volumes I, II, III, IV, V, VI, & VII to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman

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No. 19-35427

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK E. GABLE,

Petitioner-Appellee,

v.

MAX WILLIAMS,

Respondent-Appellant.

APPELLANT'S EXCERPTS OF RECORD VOLUME V

Appeal from the United States District Court
for the District of Oregon

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APPELLANT'S EXCERPTS OF RECORD VOLUME V

Pursuant to Circuit Rule 30-1.7, appellant submits the following Appellant's Excerpts of Record, as indexed below.

INDEX

<u>Clerk's Docket #</u>	<u>Document</u>	<u>E.R. #</u>
44-1	Exhibit 304 (report of Gable interview)	841
36-4	Exhibit 280 (report of Warilla interview)	930
34-2 through 34-3	Exhibits 179–81 (reports of Crouse interviews)	935

E. R.-841

THE UNDERSIGNED, Lt. J. Peter of Records, Oregon State Police, does hereby certify that the foregoing copy has been compared by me with the original and that it is a true and correct transcript therefrom and of the whole or of a specified part of said original as the same appears on file in my official care and custody.

In testimony whereof, I have affixed my signature.

Date 4/9/91 Lebbid Thayer
Oregon State Police

1

GABLE, FRANK E.
(Previously Identified)
Interview

This is Detective Fredrick E. Ackom. The time is 4:45 p.m.; date is 11-3-89. Present in the room is Detective Paul Bain, Oregon State Police and Frank Gable.

ACKOM: Frank, are you aware this conversation is going to be tape recorded?

GABLE: Yes, I am.

ACKOM: Okay, Frank, what we'd like to do is first of all, we want to make sure that you called us of your own free will and asked us to come down here to talk to you. Is that correct?

GABLE: Yes, I did.

ACKOM: Okay, and are you represented by an attorney at this time?

GABLE: No, I am not.

ACKOM: Are you just presently serving your sentence on your Assault charge? And you're serving out your time at the Coos County Jail and when will your sentence be served?

GABLE: April 12th.

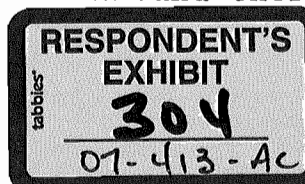
ACKOM: April 12th? Okay. Now, we want to establish that today you asked to talk to Paul. Is that correct?

GABLE: That's correct.

ACKOM: And how did you go about that? How did that....

GABLE: Officer Newcomber called the State Police up there to let him...notify him that I'd like to talk to him and then called back (could not hear him).

ACKOM: Okay, before we talk, just like before, we must advise you of your constitutional rights. It is my duty as a police officer to inform you of your rights. One, you have the right to remain absolutely silent. Anything you say can and will be used against you in a court of law. You have the right to consult an attorney before making any statement. If you are without funds, you have the right to a court appointed attorney at the public's expense. You have the right to have your attorney present with you when, and if, you do make any statement. You have the right to interrupt the conversation at any time period. Anything you say must be freely and voluntarily said. Do you understand these rights?



Ex. 206

GABLE, FRANK E.
Interview

2

GABLE: Yes, I do.

ACKOM: Having these rights in mind, do you wish to talk to us now?

GABLE: Yes.

ACKOM: The time is 4:47 p.m. Okay, would you sign this, Frank. Just acknowledging that we read these rights to you and you understand them.

Okay, Frank, we're here strictly because you called us and wanted to talk to us because you apparently stated that you had some information for us, so we're here to listen.

GABLE: First, I've been kinda doin' some more readin' the news articles, newspapers, and that kind of stuff about the case and like I said before I don't have no involvement in the case; you know, I didn't kill this guy and I really don't know who did, but I read the paper the other day and it said that the guy Keerins that I was in the County Jail with that told them I had confessed to this killing. Now this story that Mr. Keerins is giving you here is the exact story that he told me, but just turned around.

BAIN: It was in the Statesman, or the Oregonian.

GABLE: He told a guy named Stanford that I had confessed to the killing, was what he said, but he basically in the County Jail came around to me.... No, he never straight out said, "Yeah, he did it," but like he would talk about the killing all the time, and it's like I've got five witnesses that'll say as soon as they put me in this guy's cell. One is my attorney, my father and my wife, that I thought he was trying to pump me for information. I called them and told them and told them, "Hey, look, this guy, that's the only thing he wants to talk about." Every day he'd bring me an article in the paper and show me the paper and he didn't like things that he would kind of say the next day would come out in the paper. You know, and I'm thinkin' like, I told about four or five people, "Man, this guy's trying to pump me for information or somethin'." It's like, you know, it's the only thing he wants to talk about when you have him in your cell, and I thought I seen him drive by the night before in the back of like a police car that's a taxi, but everybody thinks he confiscated a car like the police that they drive around and I seen him in the car goin' like this peekin' through at me and like noddin' and somebody reach across this guy and tap him on the back. So then, like I go to jail and they put me right in the cell with this guy and right out of the gate I recognize him as being the guy in the back of that car. So I told my attorney about it and he said, "Well, you don't say nothin'." Well, I'm to the point now where, I just want to say, well, you know, 'cause I ain't did nothin'. So if I can help the

GABLE, FRANK E.
Interview

3

investigation, I'll help the investigation. So, Keerins basically told me that, you know, he believed it was a fluke. You know, that's the exact word he used. I don't even use that word. And he said that I believe, you know, it wasn't goin' to kill him, you know, set up. I think it was just a fluke, and he walked out and caught somebody. That's what he told me. Right then he would go, but then he would say like, my brother wasn't involved and I don't know nothin' about the killin' and he'd throw his eyebrows up, you know like, you know what I mean, bro? and givin' that like, you know, just with a doubt there that maybe he did know even somethin'. So, I got a letter from a partner that will state that I don't even like Keerins and that we didn't even like each other to start with from years ago and so why would I go and confess somethin' to this guy, you know. In the paper, what gets me the most is like he throws it off everything that's in the paper that he said that I said to him was what he said to me, but then in the paper my question was, and I just read it in the daily, why did Keerins go start blaming me and then throw this guy Cruse, Crutch, Cross or somethin' like that, he said that Croutch didn't have nothin' to do with it. You know, like I was trippin' on that, like, he blamed everything he said on me, you know, and then he gave me that shadow of doubt, like he knew somethin' or somebody was involved, but then like he could have left it by sayin' that Frank told me that, but then he goes on and tells this other guy. You know, I was wondering why. You know, in the papers that's what it says. You know, it's like he throws it back on me as being the person and then he goes on and makes sure and states, you know, kind of bowls it out a little bit, like Johnny Lee Creush had nothing to do with the crime at all. You know it is like it just didn't ring. Like, right away, that rings me, like maybe that's the person he's hinting around with at the County Jail when he's raisin' his eyebrows. You know, and then everythin' I said that I did, like I was being....

BAIN: Who did?

GABLE: That's what it said in the paper.

BAIN: He didn't tell you that?

GABLE: No, he never told me that in the County Jail. He was like, he would talk to me every day. He would call Phil Stanford every day. You know, like I told somethin' attorney at (could not understand), plus my dad on the phone and my wife, and I think, man, how's he doin' this... every day he's talkin', you know, he's callin' the guy at the newspaper and he's showin' me these articles and sayin', "Look, man!" You know, every day. You know, it's like he was just too enthused in this page. I know his brother was involved with it, so now it makes me think, well, he's throwing this off on me to cover his brother or was these two guys in here linked up or what. You think, hid, and he, you know, now who was the one he made these

GABLE, FRANK E.
Interview

5

Corthell, is a friend of mine from when I was in jail with, knows Keerins and he'll state right in here that Keerins and us didn't get along and he didn't like us at all. (His voice became very light at this point and I could not hear what he was saying.)

BAIN: This is a letter you received from a guy named Cortell.

ACKOM: The letter that Frank is referring to is from a Corthell, P.O. Box 1147, Vancouver, Washington 98666. It's post-marked October 10, 1989, addressed to Frank Gable, Coos County Jail.

BAIN: So, you're offering this letter to show you and Chris Keerins and Mr. Corthell never got along?

GABLE: When I got in jail with him, it was like, you know, I was supposed to come over to his house, I guess and confess to him. Do I look stupid? Am I goin' to go confess a capital murder with some guy I don't get along with? I don't even know --- I've never even seen this guy on the streets. I mean, I'll even take another lie detector test. My attorney, here, Rick, I told him that two weeks prior to this thing ever coming out in the paper the full story about, you know, I'm thinkin' I seen Keerins in the back of this car and maybe it was Thursday night or something; no Wednesday night, like at 4:00 in the evening at the store and the taxi came through by with two people in the back and did that, and I told my old lady right there, I said, "Man, that's that guy Keerins right there that was in the back of that car and the next night they put me in the cell with him. They arrested me at like 4:00 in the morning and they put me right on in his cell. I thought it was a set-up from the go.

BAIN: You think maybe he was trying to set you up?

GABLE: I don't know if he was setting me up. I saw him in the back of that car. I don't know. What would be his reason to say I said that. You know, it's like he told them I said it was a fluke. Now from what I understand, it happened in the area around the Dome Building. I know the area from when I was an inmate over by the warehouse. By looking at that aerial photo, it looked like it was a State vehicle. So now, he's saying the car was unlocked. Now, a state vehicle.... what's in there to steal? How long can it take a person of my size. At that time I was only 205 pounds. I guess, you know, from what my attorney says Michael Francke is like 5'9" or something like that; he's not a very big guy. I mean, I'm a boxer, State A wrestler. I mean, it wasn't going to take me to jump in the car, state vehicle, or whatever, you know, grab everything I need, what's going to be in there, to get away from there, when the Dome Building was that far away? I mean, that don't make sense.

BAIN: You've had a lot of time to think about it.

GABLE, FRANK E.
Interview

6

GABLE: (Could not hear first part.) At that time I wore glasses.

BAIN: Have you thought about where you were?

GABLE: I was with Chris'. I'm positive I was with Chris -- he lives with 11 -- 1235 -- 12th and Cross. I know I was there.

BAIN: Could that be Chris Warila?

GABLE: Yeah, that's what it is. I'm sure I was there. The next morning I was at Shelli's. Left there and we took things like clothes to his friend who works at the Thrift Store. We took a bunch of them clothes and got some stuff that looked real neat and I got some dresses out of there for Janyne, right, her work dress had split down the side so I wanted something she could wear to work. I remember having those in there and we were going home and Janyne was mad 'cause it was 5:00 o'clock in the morning when I got home. She'd got everything taken back and brought the stuff so then like I dropped her off at work and remember goin' around and seeing that flag stuff up and I remember goin' back over to Shelli's and goin' to Shelli's and like Kris Keerins' girlfriend was there. She said, she made the statement, like I said, "Man, there's cops all over by the State Hospital." And she goes, "Yeah, they arrested my old man for killing Michael Francke. They got him in jail for it." So I remember making that statement and so I left there and went back and I picked up Janyne and I went over to Chris' and messed around there for a while I think; then I went back over and I picked up my wife and we left and when we was leaving I remember she goes, "Oh, the State Police were over again asking questions about where we were last night and stuff like that," and I remember clearly making the statement to her, that, I guess I couldn't,,,, she goes, I said, "Well, where did you tell them we were?" She said that she told them we was at home and I told her, well good, you know. But then, 'cause I remember making the statement, "I guess I couldn't tell them me and Chris were out dippy dumpstering." You know, that would be kind of embarrassing, you know I'm driving a \$12,000 sport car out digging in the dumpster. I remember making that statement to her, so....

BAIN: Since you've had some time to think about it, the last time you and I talked, we talked about you saying you remembered bringing Janyne to work.

GABLE: Right.

BAIN: And then you remember picking her up at work when she was finished but you weren't sure if it was 3:00?

GABLE: I thought it was 4:30. Now you said it was 12:30.

GABLE, FRANK E.
Interview

7

BAIN: So let's say you picked her up at 12:30. Where did you guys go? Do you remember anything at all after you picked her up?

GABLE: I remember we went home. We had to go home.

BAIN: You said you went to Chris' house that night. I want you to back up and tell me what you did from the time you got to Chris' house back to when you picked Janyne up.

GABLE: Oh, you're talking the day prior.

BAIN: I'm talking about the day of the murder, January 17th.

GABLE: You're talking about that day, right? I picked her up at 12:30. I come to work and the stuff was all there, right.

BAIN: That's the next morning.

GABLE: Oh, that's the next morning?

BAIN: I'm talking about the time before the homicide, to the night of the homicide.

GABLE: Okay. The night of the homicide, I'm positive I was at Chris'.

BAIN: The day of the homicide from 12:30 on and then that night, you were at Chris'?

GABLE: When he got killed?

BAIN: Right. That's when you were at Chris'?

GABLE: Right.

BAIN: Do you remember what you did?

GABLE: Now this is the 17th; he got killed the evening of the 17th? She got off at 12:00, 12:30? I remember picking Janyne up and driving past Park Street, you know, past Buster's.

BAIN: (Could not hear) What I want you to do is slowly tell us what you did that day and how you

GABLE: It had to be like about; I thought like, I thought you was talking like I picked her up at 12:00, that's the day he was dead. That's what I've been talking about.

BAIN: Apparently, ()

GABLE: I dropped her off at 6:30 and I pick her up at lunch usually and

GABLE, FRANK E.
Interview

8

then drop her back off at 1:00 and pick her back up in the evening.

BAIN: So instead of picking her up that day at 3:00 p.m., you picked her up at 12:30 when she got off early. You're not sure whether you brought her home at 3:00 p.m. Let's say you brought her home at 12:30. What did you do next?

GABLE: Yeah, I believe I brought her home. 'Cause I remember going down the street and ().

BAIN: If we say you brought her home, do you remember what you did after that?

GABLE: It had to be, if I remember right, I went over to Chris', I'm not sure what it was, but I know Chris and I had left there, we went to the AM/PM 'cause he wanted to know if I could dump some dope for him, so I told him, "Well, sure." We went out to the AM/PM. When we got there, sold a guy named John a 16th wire to him for \$85.00, bought two candy bars and two sodas and that should be on the receipts if they have them for that day and that was like about, I'm thinking like 7:30 to 8:00 around in there, and then I went over to another guy's house, this girl's right there behind him in the apartments, them white ones, and knocked on their door and see if they wanted some lines and they weren't home. She was home, the girl was, but the guy wasn't. I don't remember their names and Chris and I went from there all the way down Hawthorne, back around to his place, up to Fred Meyers, behind there where they've got another dumpster up there, messing around looking for antiques.

BAIN: What were you driving?

GABLE: The Supra.

BAIN: When you went to Chris' house, were you by yourself?

GABLE: I think so. Even if I drop Janyne off, I go straight to Chris' and then Chris and I were on the go all the time. Chris and I are together all the time. It's like I'm always there all the time. It was like Patty and Gayla. Gayla was like in the bedroom sleeping but she was right there (). For me and Chris, we were going out grabbing these bundles of clothes and going through them, and take them all up and take them back out. Out, you know and we spent hours doing that.

BAIN: Who had the crank?

GABLE: Me and Chris had it.

BAIN: Nobody had more ().

GABLE: No, we'd do it together. I don't know. We just took off (

GABLE, FRANK E.
Interview

10

GABLE: Chris and Patty. And like later on earlier in the evening, Chris and I had cruised. I went over to his house, picked him up and seemed like Andre and those guys were with me for a while. Andre and Mike and seemed like Shelli was around and I dropped them off. She picked up some dope and we got some from Andre too, or something and she cut the hell out of it () and I just don't remember exactly. I have a bunch of stuff written down on paper. I don't know, it was the next morning, I believe, it seems like I was there prior. I go over there all the time; stop, go, eat, go back over to Chris' and then come back over or go to Jerry Paul's.

BAIN: Did you use the phone at all at Chris' house?

GABLE: He didn't have a phone.

(Conversation I couldn't understand)

GABLE: I was wearing the same clothes I had when I left; same clothes, same boots.

BAIN: How were you dressed?

GABLE: I believe at that time I had my Spalding tennis shoes. The only two pairs of shoes I have is my Spalding tennis shoes and my boots at that time. And both of them should be in my property at the house at Janyne's mom's. At that time () I believe I only had like probably two pairs of pants that fit, you know, 'cause I'd lost so much weight. And one I was a pair of blue, my Wrangler, that has a yellow thing that goes like this and one pair of acid-washed jeans.

(Conversation I couldn't hear.)

ACKOM: This was January 17th.

GABLE: Once in a while I'd wear a leather one if I had one () but usually I always showed up in the same cotton shirt or this cut-off shirt. All my shirts are cut off.

BAIN:

GABLE: () Same time every morning; 6:00 or quarter to 6.

BAIN:

GABLE: She didn't even know I'd seen him. No, 'cause we came in the back and parked it this way, came in, I dropped her off, she got out and then I turned around in that street down there and went down it.

GABLE, FRANK E.
Interview

11

BAIN: Did you go down Center Street?

GABLE: Yeah. Okay, dropped her off. Okay, you know how you come in toward this alley, you drive down this little alley (), she got off right here and then I went down the back () the Dome Building....

BAIN: After you dropped her off, and saw the crime scene tape, where did you go?

GABLE: I don't know if I went... see, I don't even know what house or apartment we were in at that time. I don't remember if we were still in the 3755 Hyacinth Street apartment or the other one. I believe we were in the Hawthorne apartments. ()

BAIN: Think back, what were you thinking when you saw the crime scene tape?

GABLE: I remember seeing a phone up there at times and it was like, my first thought was like, "Wow, it wouldn't be much of a security job." And I was thinking some nut committed suicide. And that was like my first thought and then I turned and I was thinking, "Wow, it'd look weird if this cop stopped me or something, man, and I'm like, I'm off the joint and stuff," and I'm thinking, that was my first thought. Shit. And I was kind of walking away and I was thinking, "Oh, I know he's got my license plate number." You know, it's like, anybody's coming through there.

BAIN: Did you stop?

GABLE: No, I just turned and I remember coming up and I believe I turned and went all the way back down to Hyacinth and back to the house to take Jessica to school. Jessica was still home.

BAIN: Was Jessica by herself?

GABLE: She was either home or we dropped her off at the babysitter's.

BAIN: Is it possible you ()

GABLE: It's possible.

BAIN: So, you see the crime scene tape and left. Where did you go?

GABLE: I think I went to Shelli's, but I don't know if I went home first and then over to Shelli's.

BAIN: Why did you go to Shelli's? Do you remember who was at Shelli's?

GABLE, FRANK E.
Interview

12

GABLE: 'Cause I always go to Shelli's at that time.

BAIN: Do you remember who was at Shelli's house?

GABLE: That morning it was Chris Keerins' old lady. I don't know her name. She's got long brown hair and she was scoring some dope. She says, I remember her making the statement. There's all kinds of cops up there where my old lady works. I told that to Shelli and she goes, "This girl hears, they got her old man for that." So, I says, "Oh, yeah?" and she goes, "Yeah, they arrested my old man, Chris, last night" or something. I don't know if he got arrested right away or what. The next day ()

BAIN: Was there anybody else there at Shelli's?

GABLE: There was me, Shelli, that girl and one other girl.

BAIN:

GABLE: Keerins. I don't know. He wasn't around. He didn't come around till much later. I don't know,,, he wasn't around then ().

BAIN: Did you have any weapons then?

GABLE: At that time I might have had that AR-15 and maybe the 9mm.

BAIN: Did you have any knives?

GABLE: I might have had my switch-blade at that time but I might have already given it to Jason.

BAIN: Where did you carry it?

GABLE: In the car; 'cause I don't like stuff in my pocket.

(Conversation I couldn't hear.)

GABLE: I never liked big shit in my pocket. If I was in a bad part of town, I'll carry it and as soon as we get out of the bad part of town I give it back to her.

BAIN: How about a sheath in your belt? Did you ask Chris' girlfriend at Shelli's how she knew about her old man being arrested for killing Francke?

GABLE: Like I'm saying, I'm not sure if that was the same day or days following or,, I just remember saying that there was cops all over the place. I remember saying to her, "there's cops all over up there." 'Cause for several days there was like cops everywhere, including that night. It could have been that morning, or that

GABLE, FRANK E.
Interview

13

next day. It was like real close to that day, though; it was like, I just don't remember exactly.

BAIN: It could've been another day?

GABLE: Right.

BAIN: Do you remember if Randy Studer was there that morning?

GABLE: I don't know. I remember one morning I stayed with Shelli and one night I stayed at Shelli's house and Randy came up and knocked on the door and I was at Shelli's house and I kind of looked out the window and he was like pissed off 'cause I owed him some money or his old lady some money, or he thought I did, and so we didn't even answer the door 'cause we knew he was just going to hound us for some dope. That's why we didn't answer the door. And that was real close to that time, too. () You know, they gave me money to invest for them and sell the dope.

BAIN: Had he given you money to buy dope?

GABLE: You know they gave me money to invest for them and sell dope.

BAIN: How much?

GABLE: \$20.00.

BAIN:

GABLE: I think it might have been; I'm just not sure.

BAIN:

GABLE: She came out to our house one night. She brought a case out there (). She got a ride out there (). I wrote some of that stuff on paper, like, I remember it was real close to this time. I wrote when payday was, which was on like a Friday. She got paid on Thursday or Friday and I took the money out and I told her, "Okay, well, I'll see you such and such a date," (). It seemed like that was ().

BAIN: Did you pick Jessica up?

(Conversation I couldn't hear)

BAIN: Why did the landlady evict you and Janyne from the Hawthorne apartment?

GABLE: The landlady said there was too much traffic coming in and out. Well, she said there was too much traffic. She said that the lady next door was complaining about too much noise. Too much traffic

GABLE, FRANK E.
Interview

14

and the reason they kicked us out was Scott downstairs, the guy (), he was doing that night; he was mad. He threw his plate out and it shattered. Well, the lady came out. She didn't like us because I told her I ain't paying for the damn thing. You parked behind me. If you know I didn't have a driver's license () you park right behind me. So, she was mad and filed small claims on us and the landlady and she were good friends.

ACKOM: I'm going to have to interrupt the conversation at this time. The time is 5:30 p.m. I'm going to switch sides of this tape.

Okay, the time is 5:32 p.m. We are starting the tape. Conversation is with Frank Gable, Detective Fred Ackom, Detective Paul Bain and the date is 11-3-89.

BAIN: Now, how certain are you of your movements on the 18th after Shelli's house?

GABLE: I'm not certain of my movements during all of January. You know, I mean I'm just putting some sketchy places together and I can pinpoint certain times like you're saying it was Martin Luther King's birthday was on a Monday. (in trouble on Tuesday. I don't even remember her being home. I'm trying to remember back as far as () I have lists of full size paper I was remembering people, places and that sort of stuff. ()

BAIN: You and I talked about

GABLE: I know what you're trying to do to me. You're trying to make sure I get one of the statements so it will record.

BAIN: No.

GABLE: I'm not sure.

BAIN: That's why the tape recorder, too. If you're not sure of something we want to know you're not sure.

GABLE: I'm sure you do.

(Conversation not heard)

GABLE: Like, I came down here in May somewhere. Janyne and I, Janyne and Ken and I. I went back up and got her and brought her down; we were watching the news that night. I always thought Francke got killed in the morning, 'cause when I came up to that crime scene, that automatically clicked on me, like, "Ah, somebody got killed this morning." So, that's when I thought it was, like that morning. I never really noticed it and then, like, me and my dad

GABLE, FRANK E.
Interview

15

were watching T.V., and the news, watching the news one night down here in Coos Bay and it said the night Francke was killed. () I made the statement to my dad, "I thought he was killed in the morning." And my dad even () from about 19 to about 23. Now I remember one time I was over there and it was about that time I had that AR15. I remember real clearly that this kid was trying to freak out and Bucky told me they were out doin' jockey boxes and they had to run. Well, one was up in a tree and one was hiding. That kind of flashed on me laying in my cell one night. Why did they have to run? So that might be (). I remember them making that statement () they had to run. () jockey boxes, nice car.

BAIN: On the night of the 17th, when you went to Chris Warila's house, () do you recall seeing a guy named Childers? Earle?

GABLE: Oh, Childers, yeah; lives up on the top of Cross by the school up there.

BAIN: I'm not sure where he lives.

GABLE: Is he the guy that stole the car? () Is he an older guy?

BAIN: Yeah. () Do you remember seeing a guy

GABLE: Possibly. () I know one time Chris went out... like I was supposed to be at Chris' and Earle was like waiting for me. I told him, hey, I'll go into Chris' and take his wires off and Earle was supposed to like wait for me, you know, (). So I told him to wait. Well, Chris sees him cutting through the alley or sitting out on top of my car or somethin' from inside the house. Chris went out and went off on him and that's right around that same time. I wrote that on (), too. ()

BAIN: When you were talking about Burgess, going over there and there were some youngsters over there about 18, 19, 17?

GABLE: Like 19. They looked about 19 to about 23.

BAIN: Was any of them staying named Jodie? Does that ring a bell with you? Do you know any Jodie? Say 17 years of age, somewhere along in there. You don't know a Jodie.

GABLE: Does she go by Jo, or?

BAIN: I've got a picture. That'd be the best way.

GABLE: Yeah, I know her. She hangs around with Doug Scritchfield. He's

GABLE, FRANK E.
Interview

16

the one that's doing all them smashin' dashes in Salem. A whole bunch of 'em.

BAIN: What do you know about Jodie? What conversation did you have with Jodie? Did you have any get togethers while she was there?

GABLE: Well, one night, this was like in July, that her and Munchie and me and some other guy, I'm not sure, we met in Salem. We were going to go over..... they were supposed to get some dope, a couple of ounces and sell it, right, and they were supposed to have somebody meet us over at my place. Us three and this other guy, we go over to () house (). He lives behind State over there on State where that 7-Eleven is where that Circle-K, (). We went there and they met this guy there, we rapped there for a while and then we went over there. I never talked to her. I never even talked to her over there.

BAIN: Well, she wasn't close enough friend or acquaintance that she would be running with you at all.

GABLE: No, I've never been in on her capers or anything. I've been, I've just seen her a couple of times.

BAIN: Could she have been with you on the night of the 17th at all? Do you think it's possible?

(I think there is conversation here, but it's impossible to hear.)

GABLE: Now I know why I can't remember that name, you know, it's like I've heard it a couple of times.

ACKOM: Did you see Munchie that night?

GABLE: ()

ACKOM: Was she usually with Munchie?

GABLE: I've only seen her twice. One time was when,,, both times has just been recently. It's like in July, and the other time was like in July.

ACKOM: Okay, so back in January you don't remember seeing her that night when you were doing the thing you did?

GABLE: Because Munchie he didn't come around but one time over in that area, he was around maybe one time our house first, well, he called me a couple of times from Cornerstone and wanted to be in the program and then he came to my house one time and kind of cruised around, got loaded and then he split and I haven't seen him for quite a while. He had followed me over to Chris' one time. I told Chris, well, man, well Chris goes, this guy just came up and

GABLE, FRANK E.
Interview

17

knocked at my pad, you know. He said he knew you and stuff. I said I didn't tell him to just come over here.

ACKOM: Besides Warila, back around the 17th, the time period, was there any other guys that you really spent a lot of time with?

GABLE: I spent a lot of time with Jason Farm, Mark Gesner and Garold. Right around in that time it was like Garold and I, Mark, Jimmie Ferrell and Paul would come over to the house quite a bit and sell dope.

ACKOM: How about a guy named Micky? Micky Goss?

GABLE: I think he was gone. I don't know if he was around then or not.

ACKOM: Could any of the people that you just named have been with you on the night of the 17th of January? I mean it's real possible that one of those...

GABLE: Micky could. Micky stayed at my house a lot. () I'd pick him up from school all the time. Garold was always there all the time. () We always used my car.

BAIN:

GABLE: I never really talked to anybody about it. It's like, except with Janyne, 'cause you know, she'd mentioned it and we talked about it once in a while.

BAIN: What did you tell Janyne?

GABLE: Nothin'. Just like, she told me that I made the statement. She said, "You made the statement, well you knew what happened." And I don't really remember making that statement, but then I do kind of, a long time after, I remembered, like saying. You know, I don't remember if I made that statement or exactly what. You know, somebody was telling their story and I said well, that's not what happened, you know, and I'd heard the news so by listening to the news I formed my own opinion of what happened. It sounded right to me. It sounded like drug corruption, you know, so I formed my own opinion, just like anybody would say.

ACKOM: Frank, when Paul and I were down here on the 15th of September, do you remember when we did the polygraph? What would you have meant when you told me that you had told Janyne that you killed Michael Francke?

GABLE: I what! I told you guys. I never made that statement to you.

ACKOM: What do you suppose,, what were you thinking when you made that statement? You don't remember making that statement?

GABLE, FRANK E.
Interview

18

GABLE: I never made that statement.

ACKOM: You don't remember making that statement?

GABLE: I never did make that statement. It's not that I don't remember. I never made it.

ACKOM: Okay.

GABLE: I told you that I told Janyne that I was joking around when I said that they're going to come and arrest me because I failed the first polygraph, was what it was. I never told you that I did the killing. I've never made that statement to nobody, ever.

ACKOM: You didn't say to me that you know, or that you killed Michael Francke, but you were just joking around?

GABLE: No, I never made that statement.

BAIN: Did you tell Jodie?

GABLE: No. I never did like Jodie anyway. She run with Munchie and I wouldn't trust her,,,,dime a dozen. You know, I'm not stupid. I don't trust a lot of people. It's like, I don't go around tellin' people my crimes. It's like, I've done 10 years () not tellin' people.

BAIN: Didn't you "tax" people?

GABLE: I used to always say I did. I never did.

BAIN: What do you mean you are going to "tax" someone?

GABLE: If they owe you money, you go and take a T.V.

BAIN: Are you absolutely sure that you had never taxed someone?

GABLE: Well, I don't know what you mean by collected money for somebody. I went with Mark and them, like, he got ripped off for \$700.00 and we went looking for the guy that owed 'em. I collected money for Chris, but not considered "tax", no, it's like they just gave me the money. I didn't tax them.

ACKOM: How did you first meet Mark Gesner?

GABLE: I met him through Kevin Walker.

BAIN: How did that meeting come about?

GABLE: I was over at Shelli's. This is the first time I met Mark. I had

GABLE, FRANK E.
Interview

20

if I was sleeping and he knocked on the window.

BAIN: I was wondering if it was the morning after you dropped Janyne () . The night of the 17th, when you say you went to Warila's house, did you go to Janyne's mom's house () ?

GABLE: The 17th? She didn't like me about that time, 'cause Janyne and I,, well, did I go there? Was there anything prior in that week that happened that seemed special? See, that's what I wanted you guys to do was give me like special days, maybe, 'cause I have a list of things I wrote down, I mean, two pages full of it, things, places I remember, people I remember seeing, comments made.

(Conversation I couldn't understand)

GABLE: Everything I've put together. I haven't read all the newspapers, but most of 'em, or some of 'em heard. Everybody at the penitentiary that, words came down from there that there's a guy up there that he says he knows who did it. A lot of people believe it's Nick Armenakis, that he hired somebody and that they believe that he took somebody out of the prison to have him killed and then brought him back into prison and made this deal with him like, okay, look, you do this and you get this money and we'll see that you get paroled this day. Whosever going to suspect you...you're in prison. That story's out, but a guy named Romeo. I don't know his name but he was in Marion County Jail, he came down there and told me, look, just hand tough, you know. Word is that there's a guy out there knows who did it and that he's getting ready to blow the cover on this thing but he's just, you know, afraid because of the heat. He's scared of (). And then something in the heart tells me that Keerins and Keerins' brother and this guy, John Lee Crouse, did it. One of them three did it, you know, just by the statements Keerins made is why. His brother was arrested for it. This guy's sneaky enough to me in my opinion to say, okay, now Gable, now I done told him that stuff and hinted around to him, now he's going to roll on me first, say Gable told me all that, 'cause thinking I would roll on him. I wouldn't do that. I really didn't think about it 'cause I thought he was a chronic liar, you know, like every day he's on the phone. You know, why is this guy so enthused about this case. So that makes me believe that why did he go as far as making sure he put in the paper that the guy across from him had nothing to do with it at all? He made sure that was in there. It's like, it stood out. Why would he do that? To me it's like maybe taking the heat off his brother, maybe he's connected with this guy because he used to tell me they used to strip cars and stuff, so then that kind of clicked on me well maybe they were stealing these cars.

BAIN: Do you know Johnny?

GABLE, FRANK E.
Interview

22

GABLE: I called him and then he called my house.

ACKOM: Was Keerins there to listen to the conversation?

GABLE: No one's ever around ().

ACKOM: Whenever you made a three-way, he wouldn't have been there to overhear what you were talking about, or at least hear your end of the conversation?

GABLE: ()

ACKOM: Did you ever call anyone, any female other than Janyne?

GABLE: Yeah, I did. Nancy Smith.

ACKOM: Nancy Smith?

GABLE: Right.

ACKOM: Okay.

GABLE: That was one you mentioned a little bit ago.

ACKOM: Okay. What did you talk about in that three-way phone call?

GABLE: I asked her that if she would go over to Shelli's and have Shelli, you know, tell Janyne that I'd like to get a hold of her. I was worried 'cause she wasn't home yet, I didn't know where she was.

ACKOM: So that's what that conversation was about then? And that was during that 5 or 6 day period when you were with Mike? Could he have been there and have heard that conversation?

GABLE: He gave me the phone number.

ACKOM: Okay, in that phone conversation.....

GABLE:

ACKOM: Okay, but when you called, and Nancy's the only female you called ()?

GABLE: Right.

ACKOM: When you had that conversation, and you asked about Janyne, did you tell Nancy anything, did you make any statement about that you knew what happened in the Michael Francke murder?

GABLE: Oh, no, I never even mentioned nothin' like that.

GABLE, FRANK E.
Interview

25

GABLE: My wife, maybe it was mentioned around Kenny Ferrell. I never told him nothin'. I never said nothin' about, "I did it," or I know who did it, or you know.

ACKOM: You mean just discussions about..

GABLE: Yeah. Well, Michael Francke got killed. Yeah, yeah that's what I heard.

ACKOM: Who besides here, that you've already talked to?

GABLE: Chris.

ACKOM: Warila?

GABLE: Yeah.

ACKOM: And you never said anything

GABLE: I've never, since the time that I found out that it was Michael Francke, I heard it on the radio that he got killed, I have never made the statement that I have had any knowledge that he had got killed, who did it or I have never ever made the statement that I have did it or that I knew who did it. It's like you've come around to me 50 times and you're going to keep coming around to the wrong person and I'm going against everything my attorney told me, "Now don't talk to them. If it comes to trial, it comes to trial." I don't believe in that; it's like I'm a Christian now, a Christian before I come into jail and it's like, there's a killer out there and he did wrong and I'm trying to do my best to help you and to let you know I'm not the killer. You know, I might have made some stupid statements or been involved in some funky statements and they might have perceived something wrong or whatever, you know. If we can clarify that, great! That'll help you guys, you know, with your investigation and maybe find this killer. I'm all for that. I'm not going to set here and have you guys start accusing me again, and I'll just say well, I terminate this conversation and I'd like an attorney. Because....I'm not a killer.

ACKOM: Well, we're here simply because you called and wanted to talk to us and we're here to listen to what you have to say. And we're just trying to establish, you know, what you were doing that night,,,,,

GABLE: Sure, I would love to tell you, Fred, I was with this person and it was at this exact time and it was at like 7:30 and 8:00 and I was with this guy and there was 15 people around me, but God would strike me dead for being a liar, and I'd go to Hell for lying.

ACKOM: Well, you can't tell things you don't remember.

GABLE: You can't tell things you don't remember or aren't sure of. I

GABLE, FRANK E.
Interview

27

I go to trial and I do beat this case. People out there are going to know Frank's not a killer. I would love that to get in the paper every day and say, "Yeah, I did not do this," and go and justify everything that's being bad said about me. But see, that's not my type. I don't do that. Just like, you know, I don't go talking to some fool that I don't even know and confess a capitol murder. That's a fool. You know, I'm not no fool, Fred. It's as simple as that. I wouldn't do that. I mean, ain't it obvious. I ain't jumped in the paper and said all these things to everybody and justify.

ACKOM: I understand what you're saying, Frank, but on the other hand, you were talking just a moment ago about how you would grieve for people that would, you know, that get killed in that manner. You know, if it was your family or anybody's family, so that shows me that you have remorse.

GABLE: You know, I got a conscious just as well as the next one. I've done a lot of time in prison but I've also changed a lot and people don't realize that. See, everybody's looking at Frank Gable 5 or 10 years ago; they're not looking at the Frank Gable that's been out there for the last year and a half trying to make it, relapsing, getting in fights with his wife and, you know, trying to make it. They're not looking at the person who's struggling out there to make it.

ACKOM: I know that everybody reacts differently in certain kinds of situations. Things happen, you know, things happen. Things happen every day that we wish we could go back and change.

GABLE: How many of them druggies that you go out to that know me to take you back to January 17th and say exactly where they were? See what I mean? Not too many. I've had cops here, I mean.

ACKOM: This is the interview with Frank Gable. The time is 6:15. The tape clicked off and I have just changed sides. The date is 11-3-89. Continuing the conversation with Frank Gable.

Now get up and stretch, move around. Gets hard sitting in that old wood chair.

GABLE: It's like I say, I would love to help you guys, man, it's like you know I've never made a statement I killed this man. I've made the statement, you know, like I admit, I have made the statement I know what happened in my beliefs. You know, I've seen newspaper clippings and I've seen like statements on T.V. and through that I formed my opinion and maybe in a conversation with 3 or 4 people, you know, that like I say, they say he got shot with a bazooka and I say, "No, he didn't. I know what happened," and I give my story. Anybody's going to say that. I mean, I've talked to several people here and they go, waaa, that's,,they say the same thing. They go,

GABLE, FRANK E.
Interview

28

"No, that's not what happened. I know what happened." Several people have.

ACKOM: Everybody has their opinion I know. Phil Stanford has his opinion, you have your opinion. We're aware of this.

GABLE: Phil Stanford don't believe I did this. Well, in my opinion, you need to look back at the Keerins'. Somethin' right there is just clicking. You know, I'm not sure it was him in the back of that Taxi pointing me out but I didn't trust him before I got there and I never told him none of that stuff he says. You know, I didn't tell him I was doing car burglary and it flipped out and I mean, that ain't even my conversation. I mean, fluke! That's some hillbilly talk, ain't it? He was the one who actually kind of told; that was his. He didn't say that that's what happened. He said, "Well, I think it was just somebody doin' burglary, you know, car theft and he come out and caught 'em," is what he told me.

ACKOM: Talking about that, what do you really think happened?

GABLE: What do I think happened?

ACKOM: You, yourself. You've had a lot of time to think about it. What do you think happened?

GABLE: What do I think happened..... Man, I don't know. It's like I have, I can lean on the side of prison corruption stuff, you know, a little bit, because his family said he was buying a gun or somethin' prior, shooting guns.

ACKOM: If that's the way it happened. There's several scenarios. That's one of the scenarios.

GABLE: Yeah, he was womanizing.

ACKOM: You know, the conspiracy aspect is a scenario.

GABLE: What do you mean?

ACKOM: Yeah, somebody planning to kill him. You know, plotting. That type of thing. There's somebody trying to rob him and that's one scenario. They were trying to get in his car and he startled them, and there's a scuffle and da da da da.

GABLE: That doesn't even; that's not even; that don't even fit. It's like, in my opinion, whoever went there, the car theft thing. It's like it don't fit. I seen the aerial photo; I've had time to think about it, you know. It's a good distance from the Dome Building door to the car. It doesn't fit. You know, how long would it take to jump in there. So if you () some stuff....

GABLE, FRANK E.
Interview

30

ACKOM: Whatever's bothering you, guy.

GABLE: That's what's bothering me, man. That's what's bothering me.
People not believing me.

ACKOM: When I was down, you know, on the 15th you did the same thing.
You've got to get it out, whatever's eating at you.

GABLE: That's what's eating at me, man. The fact that I can't make it out
there. The fact that people look at me and automatically they
stereotype me as not having a conscious; as being a fuckin'
psychopath.

ACKOM: No, we're not. I think you've got a conscious.

GABLE: Yeah, I've got a conscious. You're fucking right, I've got a
conscious.

ACKOM: I know you've got a conscious and I know you want to tell me. I
knew that a long time ago.

GABLE: What?

ACKOM: That you want to tell me.

GABLE: Tell you what?

ACKOM: What's been eating at you.

GABLE: That's what's eating at me, man. It's like I just can't make it
out there. That's what's eating at me. You know, it's like people
say, this guy puts in the paper, "Gable has no conscious; the many
sides of Frank Gable." Sure I have a fucked up past, you know, but
it's not,,, I've never killed nobody, Fred, ever in my life; never
took a human life. I've always hated people that did that. In the
penitentiary I used to sit around and listen to guys that some guy
walked into Dunkin Doughnuts and shot that guy in Portland and he
could sit there and laugh about that, and it's like, daily I laid
here and I think, man, how could somebody ever hold a burden like
that. I mean, I'm just being ate up in here by being accused of
it. It's like, you know, I called my Dad, and it's like, they're
out there, the news media, and they're just saying that I'm the
chief suspect. I'm not the chief suspect. Their chief suspect's
running around out there somewhere. Probably going to kill
somebody else because if he did that, that baby's sick.

ACKOM: Well, he's a sick person. It depends on how it went down.

GABLE: I don't care how it went down. You don't take a human life. You
do not take a human life. If I was a killer, you know, if you or I

GABLE, FRANK E.
Interview

31

() 210 pounds, 205 pounds, and you grabbed onto me, do you think I need to use a knife or a gun? Come on, man.

ACKOM: Well, yeah, but....

GABLE: I was a champion boxer in the penitentiary for four years. You know, I do not carry a weapon. I love to fist fight. People will tell you out there. I like to fist fight. I used to love it. Ask these guards in here, man. Look at my record. I used to fight them every time they'd come to my cell, open my door. We'd wrestle. You know, I can throw people around. I'm strong. Keerins saying that I was doing a car burglary and he come up on me. Come on! That doesn't even fit. That don't even make sense. I'm 205 pounds at the time, 200 pounds, State A wrestler. He's going to try to hold me for the police, is what he said, is that he was going to hold me for the police and you know the rest of the story. Come on! That doesn't fit. In my opinion, I tend to agree with my attorney, that Dude in California, a guy named Phil Tillotat, word is that he supposedly paid somebody to.....

ACKOM: Phil...

GABLE: Phil Tillotat, somethin' like that. Keerins used to run around with him in the joint. It's like, now all of a sudden Keerins blamin' me and they got this guy, remember? And this all happened right at the same time and now that snapped on me and I owed this guy Tillotat \$100.00 'cause I burned him. () He run off with (). It's like I'm trying to (). I got a conscious, man. It's like, I love my wife and I wish I could see her. I wish I could let her know how bad I feel for just cutting her leg, you know. I feel bad about that, man. I can grieve every night in my heart, man. I'm not a killer. It's just not in my blood. I could never take anybody's life. I would have told you the 15th. I would have told you the day it happened probably, 'cause I'd have been so geeked out.

ACKOM: Well, let's face it. That was a bad time in your life. You were running around. Tweeking and stuff.

GABLE: That wasn't a bad time. I was Tweeking isn't.... Tweeking! When you use the word "tweeking" you don't mean flipped out, twerked out....

ACKOM: Well,

GABLE: My mind, for instance, is totally great. I remember things.

ACKOM: Sure, but associating with those people. You know, it's a, it's a
H

GABLE, FRANK E.
Interview

32

GABLE: I never associated with a lot of people; I associated with a few people. A lot of people come around, but a lot of people

ACKOM: I mean a lot of the people we talked about today that you were running around with at that time. They were doing this stuff.

GABLE: Sure. But those people aren't killers. None of those guys are killers. I don't believe none of those guys believe I'm a killer. I just don't believe that. I've never told none of those people we talked about today that I've ever took any life. Never.

ACKOM: If the situation was just right and, you know, I confront you or anyone confronts you, you know, a big guy like me. I've got some training, too. I was a Navy boxing champion, but that's a long time ago; 48 years old, but a guy like me in his prime, you know, comes up to you and starts roughing you up; especially someone like Michael Francke who's..

GABLE: Was he big?

ACKOM: Who, he's 6'3".

GABLE: Oh, is he? I thought he was like 5'9" or somethin' from what my,,,

ACKOM: He's a big guy.

GABLE: I thought he was small.

ACKOM: He's a macho sort of guy; (laughter from Gable at this point) man to man. He's the head of Corrections. If a guy like that came up to you?

GABLE: I thought this guy was like 5'9", 160 lbs, from what I've heard.

ACKOM: Okay, alright, let me finish my scenario, okay. What if a guy like that came up to you and he comes up to you and you know, he's towering over you, and.....

GABLE: Want me to show you? (laughter)

ACKOM: And he grabs you and starts roughing you up and says, "Man, what the hell you doing out here in my car?" and "you're under arrest," and he's not about to let you go, what are you going to do?

GABLE: What am I going to do?

ACKOM: What are you going to do?

GABLE: Now, you're saying, hypothetically speaking, if I was put in that situation?

GABLE, FRANK E.
Interview

33

ACKOM: Hypothetically speaking. What would you do in that situation?

GABLE: I'm going to let it, if I was caught, and if he's as big as, like if you grab me like that and I was just doing a car theft or somethin', I'd let him take me to the police. I mean, what's a car theft. You know, I don't do car burglaries myself. It's like,,,

ACKOM: What if he's getting real rough with you and you think he's going to put you down; you're going to try to put him down with your fist or something, wouldn't you?

GABLE: When you're a boxer, that's your natural instinct.

ACKOM: Maybe a round house or a right cross or a good solid punch to put him down.

GABLE: No. I've never been in a fight on the streets with somebody

ACKOM: Okay, but let's say..

GABLE: when people confront me, I verbally can say, Hey, look, man, you know.

ACKOM: But let's say that he's not going to settle for that. Let's say that he thinks you're a punk kid. You're a young looking guy, 28 or whatever you are.

GABLE: 30.

ACKOM: 30? Well, let's say that he thinks you're just a young punk kid.

GABLE: At that time, I'm 200 pounds, too, though.

ACKOM: And he's getting really rough and, by God, there's no way; I mean, he's going to put you down.

GABLE: No, I can see what you're looking for. I mean, you're looking for me to say, "Well, yeah, I punched him," or I did this or I did that or I would do this or I would do that. No, I wouldn't do that.

ACKOM: No, all I'm say--

GABLE: But then I wouldn't put myself in that situation. That's like, I can't tell you what I would do if somebody came up and grabbed me from be...because I wouldn't be doing a car burglary. I wouldn't even be in somebody's house just stealing their shit, so I wouldn't put myself in that situation. I'm smarter than that now. That's why I'm not in prison doing an armed robbery gate this time or a burglary gate. I don't do that stuff no more.

GABLE, FRANK E.
Interview

34

ACKOM: Well, let's use a different scenario. Let's say....

GABLE: Use any scenario you want. What you're trying to do is you're trying to get me to say I would fight but I wouldn't do that, see. I mean, I've been arrested one or two times, look how many times I've fought.

ACKOM: I know, but when

GABLE: No, you don't know. How'd you know?

ACKOM: When a person is confronted, Frank....

GABLE: I've been confronted a bunch of times. I got confronted out here, hiding in the bushes, when Janyne got cut that night. You know, I could have ran....

ACKOM: Forget the cops scenario. If you're confronted on the street by somebody, you got two choices; you're either going to fight or run, take off. It's like an animal. You're gonna stay there; you're going to go to jail. You corner a lion... the old fight or flight syndrome. You know, you're going to fight or run. Aren't you?

GABLE: No. You're going to either stay there or you're going to go to jail or if he's slapping you around, I guess you're going to get slammed around and go to jail; at least I am. You know, I mean, he's going to slam you down; cops are going to come and I'm going to go to jail. That's what would happen to me. You know, 'cause I wouldn't fuck around with.....

ACKOM: Of course, the thing is...

GABLE: Course, I wouldn't be there to start with and put myself in that situation.

ACKOM: Unless you knew who he was you wouldn't have known he was a cop.

GABLE: For one thing, I wouldn't be around the State Hospital doing car burglaries or whatever is being done there. ()
(laughing) I wouldn't been out there. ()
(laughter) You know, I've never been involved with the drug ring in the penitentiary. Matter of fact, you look at the records, I had some snitching on some people in there for, you know, the drug ring. And they busted several pounds of marijuana in there. Because it was totally against what I believe in. I got out and I relapsed. I've never killed Michael Francke. I'm trying to help you guys, and you're barking up the wrong tree. You know, I just wish there was something I could say, or we could go across and maybe it would snap and we could get it going the right direction. It's like I'm trying to help you, but you trying to create scenarios and put me in a spot that wouldn't happen. It wouldn't

GABLE, FRANK E.
Interview

35

happen. You know, my belief is, from just the way it stands right now, I kind of believe that this guy Keerins is hooked up with this guy Crouse, or Crutch or somethin' like C R O U S E, because in the paper, it's like everything he told me in jail, it's like he'd do it and said I told him, but then, that was great. I thought, okay, what are you doing sucker? like, are you throwing this off on me now. I mean, why would he wait so long. I mean, that doesn't make sense. All of a sudden, I get investigated and it's like he gets scared, "I told him all that stuff," so throw it off on me knowing that, well, if I throw it off on him first, then he's just going to come back, say, "Well, no, he told me that." I mean, that would be the automatic thing. Right? For somebody to say, "Well, no, he told me that." Well, sure. I'm going to come and say that 'cause that's exactly what happened. I think he knew that. 'Cause this guy's not real dumb.

ACKOM: Yeah, but are a lot of people going to say that?

GABLE: Say what?

ACKOM: What Keerins said.

GABLE: No. There's nobody going to say that. Nobody. I mean unless they're just a bald-faced liar and they're connected with Keerins. Like this woman. I don't know if she told you something, but she's a friend of the Keerins just like this Smith, Nancy Smith, you know. I've never mentioned any. I never mentioned Francke one time on that phone call, that one conversation you mentioned to me. I just said Janyne, go over to Shelli's and tell my wife, you know, call her parents, they're concerned about her. () and that was it. Like I say, I've got five witnesses right now that'll tell you.

ACKOM: Okay, look, you've got five witnesses but what if we have

GABLE: What if you have a hundred. I guess we go to trial and we see

ACKOM: No, let me, let me. I listened to you, now you listen to me. Okay, we have 100 people, 10 people or whatever. What if we have more people than you have.

GABLE: You have a bunch of circumstantial evidence.

ACKOM: Wait a minute; let me finish.

GABLE: Well, you asked me.

ACKOM: Well, I'm trying to tell you. What if we had those people that say that you told them those same kinds of things. And what if we can corroborate what their telling us, what if we know, and not that we know, that what they're telling us is the truth.

GABLE, FRANK E.
Interview

36

GABLE: Then I'd say, file charges and I'll fight it in court. Because I'm confident I would beat it. I'm confident I'm not a killer. I know that God that I now believe in, you know, Jesus Christ, would not let me fight this case because I'm praying every day that God will put the burden on this person's heart so bad that they can't lie; you know, they will get caught but they'll confess themselves. And I've got friends praying for the same thing. You know, I've got Gayle Garza (not sure on name) and he's one of my friends praying for the same thing. We're praying together that this guy will get caught. And I'm confident he will. It's like, you guys, that's why I'm trying to help. 'Cause I feel for some reason, you know, I didn't want to talk to you guys 'cause my attorney said don't. He said if they got some, bring it on. But something in me said, you know, why do that. You ain't did nothing wrong. Why hide. Why not help 'em.

ACKOM: Stop and think about this. You've been down here two months and we came here because you wanted to talk about it. That's the only reason, because you wanted to talk to us. You had some information. So we're here to hear whatever you can tell us, that tells us that you didn't do it, we want to hear it. We're as interested in hearing that. But....

GABLE: In fact I didn't do it. I just didn't do it. I mean, you know, I can't give you dates, times, specific people. I would love to.

ACKOM: But with the same token.

GABLE: I know if I go to the death penalty for this, I mean, even, if say I go to trial. You know, you charge me. You know, using hearsay evidence and lies that this guy. I mean, that's like saying you've got a bunch of circumstantial evidence; maybe it fit and maybe it don't. You charge me; I know that right now, even if I went to jail for this; fine. I'm confident God would just; you know, I would be there for a purpose. It's like, I know God ain't going to let me go there. I know that, because I know I ain't did the killing. So, even if it did happen, I could live with that because I know there would be a purpose there that now I could either help somebody out or somebody through me is going to get help; whatever. You know, I just feel confident. It's like, I will be content with whatever state I'm in. It's like right now, it's like I'm in jail, I'm learning and I'm changing and I'm doing good and I'm glad. It's like everything's been lifted off. It's like, I know I'm not a killer. I believe that in my heart. God knows I'm not a killer and (). I know that. And I know there's been jailers here that are Christians and some people I've known on the street, my family. As long as we know I'm not a killer, I'll live with that. And I don't care what the rest of the world thinks. I don't care if I set on death row and get a lethal injection, I know I'm going to heaven. I mean that. ()

GABLE, FRANK E.
Interview

37

ACKOM: You've become a Christian?

GABLE: I've been a Christian. I was a Christian about a week before ().

ACKOM: Born again Christian?

GABLE: Born again, in the name of Jesus Christ, the Holy Ghost.

ACKOM: Have you been going to church while you were in jail?

GABLE: No, I haven't been in church, but I read my Bible every day and I write Christian poems and I read () Holy Bible. I was a born-again Christian before I came into jail. It's like, a couple of years ago, all the way in the penitentiary ().

ACKOM: You believe if you're right with God that that's all that matters.

GABLE: I believe if I'm right with God and I'm not lying, I know that that's all that matters to me. I mean, I don't care what other people think. I don't care if a bunch of people lie and create some fabricated story and (). I mean, I don't care. It's like I'll be a Christian and I'll be free inside of my heart because I know I haven't killed this guy. I've been looking for (). I've been here 10 years. I'm 30 years old. That leaves 20 more years. Maybe I'll die of a heart attack 'cause I've used so much speed. In that 10 years, I'm going to do the best I can to just get closer to God and keep my life straight because I know I'm not a killer and I know that people believe I'm not. That's the way it is. You have some people saying that, you know like this guy Keerins, or whoever else you may have, which I don't think you do, but you're probably trying to scare me. () I'm not stupid. I know law. I've studied law. I know that detectives, you know. I'm not stupid. I've studied law and that detective stuff. My Dad is an ex-police officer.

ACKOM: What about the detectives?

GABLE: I just know. I know what you do. I've studied law. It's like I know that it's just like you say I was the only one that failed the lie detector test. Well, Dale Penn, clearly stated that many people have had problems with inconsistencies in passing the lie detector test. And many people won't take one. See, I've taken one. You said I failed. But that don't mean, you just said that. Showing me a bunch of lines. How do I know. How does anybody know. I don't believe I failed. You know, and if I did, I believe the test is wrong because I couldn't set here right now, I couldn't set here and I couldn't use you before when I put my daughter's life on the line before God, I could not set here and tell you a lie. I could not set here and say, "God strike my little girl

GABLE, FRANK E.
Interview

38

dead" right now, Fred. I did not kill this guy. If I did, take my life right now.

ACKOM: Why would you say that?

GABLE: Because I believe that my daughter's life, that's the person I love more than anybody in the world, and if I can put her life on the line, then that's it. ()

ACKOM: It just amazed me when you said that. It just amazed because....

GABLE: You think I'm (). I'm comfortable. I know I didn't do this and I know that God knows I didn't so that's nothing. And I know that God is going to, and this case is going to be cleared up. I just know that and it's like, you guys are going to have to come back to me and say, "Look, Frank, we're sorry." You know, we're sorry that this happened. We're sorry we believed in the wrong person. I know that and I hope that when that does happen, that you're, in your heart, that you're big enough to do that. Because that would mean more to me.

ACKOM: ()

GABLE: I knew it. () It's driving me crazy.

ACKOM: That's why we're here now. This is driving you nuts.

GABLE: No, it's like I know I'm not a killer and it's like you guys are thinking like, I just asked you awhile ago and you said, well, yeah, all the evidence that we got, saying you did. And it's like I don't believe if you can honestly say that.

ACKOM: I said, "What if." I said, what if we had evidence.

GABLE: No, earlier, when I asked you. I said, do you really think I did this and you said, "Yeah." And I don't really believe, you know, (). The day I called you back, I had determined that this is what God wanted me to do; do you want me to help them or do you want me not to, and in my heart, I just knew it (). () I'd help you the best I can to solve () and if I can do that, I (). So bring you information, steer you in the right direction, maybe show you some people that I've hung around with. You know.

ACKOM: Can I tell you something? Do you remember that night when I was down here listening. Do you know how much time we spent here?

GABLE: Sure. () until about 4:00 in the morning.

ACKOM: Yeah, about 6 hours. And we talked a lot and part of the time you

GABLE, FRANK E.
Interview

39

were upset, and part of the time you weren't ().
You swear on a stack of Bibles, may God strike your little girl
dead if you.....

GABLE: Um-hum.

ACKOM: I mean, I wrote down what you told me.

GABLE: That's right.

ACKOM: That bothered me when people swear on stacks of Bibles and their
kid's head and their wife's head and that bothers me because that's
not normal for a truthful person to be saying things like that.

GABLE: It is if it's a person ().

ACKOM: Well, it is if the person is truly ().

GABLE:

ACKOM: Normally, it means the person needs reinforcement to convince me
that you are telling the truth when you're not, because.....

GABLE: That's the way you look at it, and I know that, see, otherwise I
wouldn't say that. I know that automatically, you think I haven't
thought of that? You think that I haven't thought this whole thing
out? I'm buried...

ACKOM: Oh, I know you have now. I know that. I never said you weren't.

GABLE: Everything that we're talking about, I don't even know the answers
to. I know what you're going to be thinking when I say this. You
know what I'm going to be thinking...

ACKOM: What do you think I'm thinking? Do you think I'm trying to put
words in your mouth?

GABLE: No. Huh-uh. I honestly think in my heart. I honestly think you
really believe I did it. I honestly think that you maybe think I
have information about it, which you know that time I told you I
didn't know anything, but then that stuff about Keerins came back
and the stuff about being at Shelli's came back and that girl being
there came back. You know, but the main thing with that guy
Keerins and once he said that in the paper, it was like, you know,
I didn't want to jump right out and say, "Oh, no, he told me that."
You see, I'm already covered because two weeks prior to that
statement ever coming out, I told my attorney about the whole
thing; about seeing the car, the statement he made to me about, you
know, () around that he knew something
about it, you know. I already told my attorney that and I've
already told my father that, so you can go check them out and

GABLE, FRANK E.
Interview

40

they'll say, "Well, yeah." 'Cause my attorney wrote it down to make sure, you know, (). And then two weeks later he was coming out in the paper. And he comes and talks to me personal and says, "Do you remember ()," and I say, "Yeah." Well, I got that wrote down here. It's coming out in the paper tomorrow. It just turned around. He's saying you told him. (laughing)

ACKOM: Yeah. Things get turned around by the time they get to the paper.

GABLE: Yeah, there's a \$25,000 reward. One man, this guy Keerins and his brother, initially getting arrested on it and taking the heat off his brother, like did you know this guy over here. You know, why would he go as far as saying that. That stuff don't carry (). Why did he do that? Why did he say that? Why is he so concerned about the (). Why is Keerins every day while I was in jail calling Phil Stanford. Ask Phil Stanford how many times he called. Why is he so involved ().

ACKOM: Let's go back to talking about me. Let's talk about me now.

GABLE: () You're a pretty good guy.

ACKOM: We've been talking about you. Let's talk about me. I mean, you know I'm a cop. You know, but my training tells me that after 20 years of police work that my training tells me that you conduct investigations, methodical inquiry to determine. It's a painstaking process to determine who committed the crime, what happened, where, when, how, all those kinds of things. Right? And you've got this pounded in your head and you go out and you get a lead; you follow that lead...

GABLE: Do you know how many leads

ACKOM: Just a minute! Okay, Crouse is a lead. We go out and we do Crouse; then we come around to Frank Gable. And we can't get off of Frank Gable. Everywhere we go, () someone else. So if we do a timeline, we put up pictures on the wall, we got Frank Gable up there at the top and we got whole bunches of photographs underneath Frank's picture and then we got Johnny Lee Crouse and we got 3, 4 or 5 people over here and all of those people don't even know these people over here, but we can't get off of Frank Gable. What does that mean?

GABLE: Well, that just means I know a lot of people in Salem. (laughter) Which is true. I know basically every drug addict in Salem.

ACKOM: I know that.

GABLE: And there's a lot of people don't like me because, you know, I

GABLE, FRANK E.
Interview

41

wouldn't hung dope or I made 'em pay. They wouldn't want to pay, you know, and I got the money. Just, "you pay me," just simply that. You want the dope, you get the money. You know, if we got to cart the T.V. out of here.

ACKOM: And you asked the question, Fred, do you think I did it? You're asking me, I would like to say with everything that I know about the case, that I would say, "Yes."

GABLE: At this time, yeah. That wouldn't bother me a bit. But I know that, and I think that you're wasting more time and there's a killer out there. That's the only thing I can tell you, man. Fred, there's a killer out there. It's not me, man. That's the only thing I can tell you, man. Fred, it's not me. You know, I don't know what I can tell you. You know, if you've got to give me Sodium Penathol, I'll take another lie detector test. You know, I would do anything, anything. Truth serum, anything.

ACKOM: You want to know something else I believe. You want to know something else I believe. I think you did it and I think you want to tell me.

GABLE: Sure, I would if I did do it. Ah, I don't know.

ACKOM: I think if we could go off somewhere, and you and me were totally alone and there were no tape recorders (Gable laughed loudly) and the room wasn't bugged, I think you'd tell me.

GABLE: Even if I hadn't did it?

ACKOM: Um-hum.

GABLE: Oh, I probably would, if I hadn't did it. You know, I would probably be able to tell you, but you know, I hadn't did it and I ain't never takin' in any lying. So, we can end the conversation here and we'll get us an attorney as you flip on to accusing me. I'm going to ask for an attorney. I'm not going to sit here and be accused because I'm not a killer you know. I'm not.

ACKOM: I want you to know, I want to make it clear, that we're here to talk to you. Anything you want to tell us, hey, I'll stay here all night. I want to talk to you.

GABLE: I'm basically done. It's like, you know, I would look at any picture and you tell me they said this, and I'll give you the reasons maybe why they say things. It's like that girl. You say maybe she said something. I never seen her. I don't like her. I don't trust nobody.

ACKOM: Well, I knew about the three-way conversation. I wanted to throw that out.

6:45 PM

GABLE, FRANK E.
Interview

42

GABLE: () it never was a three-way conversation.

(Conversation I couldn't hear)

GABLE: it was Keerins had asked me if I needed to use this three-way phone. I told him, "No, I never need to use it." He gave me the phone number of that girl. I called it once and gave it back to him.

ACKOM: I think Paul is here to work on the pictures. Would it be okay?

GABLE: pick all the girlfriends you want. Tell you if I know them, if I do, I do; if I don't, I'll say so. Tell you what I know about 'em. ().

(Conversation I couldn't hear)

ACKOM: This tape is about out. We're going to have another one. We've got probably 15 minutes yet.

(More conversation I couldn't hear)

ACKOM: There's a bunch in here. () I want you to know I'm not having a good time here.

GABLE: I know you guys are usually (). I'm praying that you will see I'm willing to help you guys; I'm trying to be honest.

ACKOM: If that's the case, we will see. I'm not here...

GABLE: I wish I could get you to believe and get you to understand, like I said, I may have made some stupid statements, you know, and talking with the wrong people that might be vindictive enough to say, "Well, this is the way I interpreted it, but...

ACKOM: I understand that.

GABLE: You know, I am a (). I want to help you guys; that's why I called you down here. You know, it's like any information I can give, I just feel that; I really do.

ACKOM: There's a couple of ways to look at that, Frank. (Frank's laughing) There's a couple of ways to look at that. You know, but

(Conversation I couldn't hear)

GABLE: She's been at Shelli's. Matter of fact, she might be the person that was at Shelli's. Mm, I don't know. It looks like the person that was at Shelli's that day--that's Mike Keerins girl. Hmmm. I

GABLE, FRANK E.
Interview

43

think this might be the guy that was coming around in July
(conversation can't be heard) party. He was coming over to a....
does he ride a bicycle around? Now when did he get busted? How
long has he been in jail?

(Much more that I couldn't hear.)

GABLE: He was coming over. Janyne and I...Janyne told him, like,... I was
there one time. Munchie was. I went over there and there was a
girl named April and Munchie. And I was over at Gayla's. Gayla
and I went over there in that little, uh, like Scirroco. She was
driving () Scirroco. We went over there and we was there
for a little while and Munchie gave me a bag of stolen shit that he
had or something; cameras and stuff that he smashin' dashes or
somethin'; or what it was. () That's the
only time I've ever been there.

BAIN: I'm going to run down to the Sheriff's office.

ACKOM: The time is 6:59. We're going to turn the tape off at this time.

ACKOM: The time is 7:05 p.m. I have a new tape in the tape recorder and
we're continuing the conversation with Frank Gable. The date is
still 11-3-89, and Detective Paul Bain is now back in the room.

(Conversation I couldn't hear)

GABLE: It's like I can draw you a, man, like, it's like I'm an artist. I
know that whole area around there.

BAIN: Basically, I'd like you to draw a sketch here.

(Conversation that can't be heard)

GABLE: She got out; went in and I came down this street. I came down here
and about right in here () and then I got about
here and there's a cop car sitting ()
and I seen all these cars and tape up, so I come along here and I
turned right here.

BAIN: Draw.

(Again conversation I couldn't hear)

GABLE: This is going all the way up here. I'm not sure...there was a cop
car right here.

BAIN: On that drawing, where's the front door?

GABLE: Just right here in front. See, this is where I'm talking about.
He got killed here. On the news it said that, no, it's like

GABLE, FRANK E.
Interview

44

Corrections part back here. They used to drop me off over here. I go work with the inmates and come back every morning, well, over here. Floorboard, blah, blah, blah, blah, so, when I looked out here, I saw this car and I stopped here and I kind of looked in my rearview mirror, uh, tripping out, thinking, you know, are they going to get my number, my license plate, and they looked at me and kind of turned and it's like, I turned down here and, like, I don't remember if I went this way. I don't remember going by...anything going on until later in the day, so I'm pretty sure I went down this way; I think I went down to Hawthorne and went back on Hawthorne. But, see, I was always under the information that he got killed right here because it just snapped like that is the Corrections' parking lot and then, like, when it showed on the news and that's when I was telling you about my Dad and it said he was killed in the evening; well, I thought he was killed in the morning on the steps. Well, () and I told my Dad, I said, "Wow, he got killed in the evening; I thought it was morning." So, I thought it was on the porch steps.

(Conversation I couldn't hear)

GABLE: I have some camouflage pants of my Dad's. It was years ago, like 84...

(Conversation I couldn't hear)

BAIN: I don't know what you and Fred talked about.

GABLE: We never talked about no pants.

BAIN: I like to go over your statements.

GABLE: It's like after, like, I never made any statements up until they arrested me and questioned me about it. Talked to you guys in the County Jail. It was, like, questioning me about you involved in the Michael Francke case, blah, blah, blah.

BAIN: Who was it involved in this?

GABLE: State Police.

BAIN: And they questioned you about it?

GABLE: Well, some detective did. I think it was that guy I went down here last time, I think.

(Conversation I couldn't hear)

BAIN: Was it Darrell Berning?

GABLE: Not sure. Somebody came out to the thing and questioned me, where

GABLE, FRANK E.
Interview

45

were you, that kind of thing. Help with addresses.

BAIN: Did you ask him why he was questioning you?

GABLE: Yeah. Because he was questioning everybody.

ACKOM: Then Oregon State Police did?

GABLE: Detective came out later that day. Right. About an hour or two later and arrested me. They was questioning everybody in the Salem area (conversation can't be heard). He called me several weeks later and told me, well, we're eliminating you from the investigation, blah, blah, blah.

(Conversation I couldn't hear)

ACKOM: Darrell was talking to you quite a while back. I think he started back in May or something.

BAIN: I was just curious as to why they were questioning you.

GABLE: I guess they was questioning everybody that was released in the Salem area during that period of time and I guess that's what this guy told me that was released in Salem area what the guy told me and I was getting worried cause I was a convict working around the hospital and I was a convict, blah, blah, blah.

(Conversation I couldn't hear)

BAIN: But, as far as you know, you only told Janyne that one time that you know what happened but that was in the context...

GABLE: She probably interpreted it any way she wanted to interpret it.

GABLE: When somebody makes, you know, a statement like that, it's like the person that, you know, if I said that you would understand what I mean. I mean, you can be, like I studied law in the penitentiary so it was like the guy's, four people sitting there, two people give their statement what they believe happened. I say, "No, that's not what happened. I know what happened." Then you give your statement and that's exactly the response I made. And I vaguely remember saying that. And that would be the context I meant it in.

(Conversation I couldn't hear)

GABLE: Kris' mind is so blanked out. I mean, he uses a lot of drugs. I mean, that guy leaves his keys laying around, \$1000.00 worth of cash and when I go around his house, daily, and pick up shit after him. I mean, all day long 2 or 3 times a day, he'll loose his keys. He'll have one made and turn around and sit them right back

GABLE, FRANK E.
Interview

46

down and walk off and forget where they are and we have to comb the whole house. He wouldn't remember if I made a statement or what day it was if I did say I had an altercation on that day. He wouldn't even know if it was January 30th or even March 18th, basically like a con and a scatterbrain.

BAIN: If during this investigation the detectives working on this case contact people who tell us you said you did make the statement that you had a fight with this guy and he turned up dead, (Gable laughter) would they be mistaken?

GABLE: I would say that that person is a bald-faced liar and that as God is my witness, I never killed nobody and never said that statement to no one.

BAIN: Would it be possible that you bragged out it?

GABLE: Never. I've never made that statement to anybody, ever. I've never hinted around to anybody; I've never said that I got in a fight with some big guy and gotten cut, and I've never.

BAIN: Not even kidding around.

GABLE: Not even kidding around. Not to make them think I was Rambo or anything like that.

BAIN: Well, that's going to be another problem. If you were me, how would you go about solving it?

GABLE: It's like, I don't care. It's like, right now, it's like the only reason I'm talking to you is because I don't care. It's like, if I go to jail for this crime, great; or if I don't, great. It's like I'm trying to help you find who did it. I'm giving you any information to move you in the direction on who did it and possibly where I may have been () also, but it's like I told Fred, you know, I know I didn't do it; my family knows I didn't do it; I have Christian friends that know I didn't do it; jailers that know me for years that know I didn't do it. I mean I can sit on death row and get a lethal injection and I know I'm going to heaven because God promised that.

BAIN: Have you accepted the Lord?

GABLE: I accepted the Lord before I came here.

BAIN: Oh, you did?

GABLE: Oh, yeah. Just about a week before I came to jail. I've been a Christian basically off and on all my life. I was back-slidden ()

GABLE, FRANK E.
Interview

47

BAIN: Were you saved (). I remember you talking about some kind of possible Satanic involvement.

GABLE: No, I didn't say anything about no Satanic involvement. One night I mentioned that I was listening; I pushed the button on the stereo and that my nephew listens to rock-and-roll and it's like Ozzie Osborn and I guess he's had some Satanic shit and instantly my mind clicked on, "Don't listen to this Satanic shit." You'll go in there and fail this lie detector test. You know, that's what's clicking in my mind. Don't listen to this shit, so I turned it off. That's what I meant by that statement. I've never been in Satanic worship; I'm totally against the cult; totally against the concept. Devil worshipers just, I do not believe in it.

BAIN: But you have accepted Jesus as your personal savior? That's where you're at?

GABLE: Oh, sure. In fact, when I left this jail for cutting Janyne's leg, the pastor picked me up on the way home and I went over to his church and they invited me to go to church the following Sunday and you guys arrested me Friday night.

BAIN: When I talked to you in September, you seemed to have had a problem remembering what happened with Janyne in the fight you had with her.

GABLE: With Janyne? I remember exactly what happened.

BAIN: Remember you and I talked about how many stitches she received?

GABLE: Yeah, she received 8 to 10. She's saying like 10 on the outside and 8 on the inside. I'm still not certain.

BAIN: Remember I told you I went to the hospital.

GABLE: No. You didn't go to the hospital. She was in the other room and you went and talked to her.

BAIN: Janyne wasn't in another room. (Frank interrupts.)

GABLE: She told me that she was down there and you guys talked to her all night long.

BAIN: No, no, no.

GABLE: You put her up in a motel room the following morning.

BAIN: I called the hospital.

GABLE: See, she's never told me how many stitches she had. She counted and I counted like 11. Like more on the inside or something.

GABLE, FRANK E.
Interview

48

BAIN: What I'm getting at is that you probably misunderstood me.

GABLE: No, I feel really bad about my wife's. That was a total accident. You know, every day I told Fred I go to my cell and I lay there every day and I cry for what I did. 'Cause I'm the one that got's to live with that in my mind.

BAIN: Well, mistakes happen.

GABLE: Yeah, they do. And I'm going to change, man, and I'm going to tell you, man, if I ever get out of here and I'm confident I'm getting out, I'm going to be good. I'm feeling good. People here just say, man, you've changed so much since the last time you was in this jail. It's like, we can't believe. I'm a trustee. I haven't been a trustee in 10 years.

BAIN: Oh, are you a trustee here?

GABLE: Yeah.

BAIN: Do you get outside?

GABLE: They made sure I didn't get outside. It's only obvious, like. Most guys for Assault II, I mean, it was Domestic Assault to start with, and then all of a sudden it goes up to Assault II with a 10 year, with 5 year minimum, dangerous offender with 30/15, saying Mr. Gable, if you don't plead guilty to this here in the County Jail, you're going to get the..... I mean, come on.

BAIN: Would you rather have gone to the penitentiary?

GABLE: Sure, everything's been in the newspaper. I have friends coming down that are in jail down here now from the Penitentiary, it's so over-crowded; telling me, "Man, people up there believe in you, and know that you didn't do this." There's somebody up there that says they know exactly what happened. Just hang tough.

BAIN: Why do you think they are reluctant to talk?

GABLE: Because they're afraid that their life will be taken. It's just like right now, I'm still afraid in my mind a little bit. At first I was real afraid that maybe I was just getting rail-roaded because I seen Keerins in the back of that car that night and then the next day I'm in jail with him and now all of a sudden it comes out saying I told him stuff that he told me and I kind of think, thinkin' they're rail-roading me, man. () But then, I'm thinking, no, this is too big a case for them to rail-road, because if they rail-road me, then they got a killer on the loose. I like Fred. I know that in his heart, he knows I didn't do this. I just feel that we're close to this guy that killed him, man. I believe it's Keerins, one of them Keerins', because why

GABLE, FRANK E.
Interview

49

would he turn around and say that I did that and why is he just a media seeker. He's too interested in the case, calling this guy every day from the jail, bringing the paper to me every day, he shows it to me. It's like I just got so fed up, "Man, I don't want to read that crap, man." Why do you even read that for. It's like I'm trying to change my life, I told him. I don't want to read about some guy that was killed.

BAIN: I told you from day one, we're not interested in rail-roading anybody.

GABLE: I know that, but it still, even the guards that I've talked to care and some of the people, my friends, even on the statement you made and even if they got 10 people with a bunch of hearsay evidence or somebody saying that this guy said that and this guy () so they get gone; he says chances of you getting convicted over a bunch of hear-say evidence is It's like you go to bed at night and you wake up in the morning with snow on the ground and you can say, "It snowed tonight," but you can't say it rained. I mean, you know it snowed. There is rabbit tracks there but you can't say there's a rabbit there, and you can follow the tracks to a hole and you can say there's a rabbit in there but you don't know that until you find a rabbit. But, you dig the hole out and the rabbit ain't there and you got another get away and how do you know where he's at. You can't prove there's a rabbit there. It's like you got 10 people saying, "Yeah, he said he did that." It's like, well, you know, I didn't do it and I'm confident. It's like right now I'm so confident that I didn't do it. I know that people believe I didn't do it and even if I get rail-roaded for this and go and do 20 years on death row, I'm still going to do the best I can do still to try and get everybody's every time I hear a word, I'm going to listen and get that information relayed to you guys. Like I told him, I'll wear a wire, go to anybody's house and see the people saying I'm talking just to say when I'm sitting there. You know, anything I can do to get this case resolved in my heart, for some reason, I would come in day after day, well, should I talk to them again. Should I go against what my attorney is saying and something finally just told me to do what is right. And I know that I know I didn't do this. Maybe you'll listen to some statements that somebody turned around and they're throwing off, being vindictive. It's like I can pick out a few people that would do that. Like Randy; I got into a fight with him. We got into a fight in the middle of the street. He might say something stupid like that. I don't know. Or Munchie, I called him a rat and he ratted on me and my wife.

(Conversation I couldn't hear)

GABLE: And then that girl in the photo ().
Inside, I know I didn't kill nobody. ()
I'll do the best I can since I have no idea

GABLE, FRANK E.
Interview

50

who killed him. I can live with that today. 'Cause like I say, I'm 30 years old. That gives me 20 years and I've used so much speed; my heart's so bad anyway, I've had rheumatic fever twice. I'll probably die by the time I'm 45 but at that time, from right now, I'm telling you I'm going to do the best I'm going to do and I'm going to continue to try to help you guys in any way I can, 'cause like I said, if you roast me, I'll get roasted, there's a killer out there, somewhere running free. I have Jesus Christ in my heart.

BAIN: Since you've been here, have you thought about the polygraph examination Dennis Fox gave you and the polygraph examination Fred gave you?

GABLE: I've thought a lot about that. Well, it goes right back to what Dale Penn said, a lot of people have problems, inconsistencies (); a lot of them. He told me I was the only one who failed it. So that automatically makes me click now that you're a dishonest person. So I don't really trust you. You know, it's like I said, now, I'm the only one that's failed this test, and you said yes. But Dale Penn says that many people have had problems with inconsistencies in the past. You're saying I failed it. No, wait a minute, you're saying I failed the test. You ain't proved that. You just showed me a bunch of lines and said, "Yeah, you said this is and this is," (Fred Ackom tried to interrupt this) just a minute.

ACKOM: Okay, what about the inconsistencies. What if we tested several people who flunked the polygraph. What do they flunk about?

GABLE: Well, what did I flunk about? What did they flunk about? You say what I flunked about.

ACKOM: Maybe we tested some guy that said that, "Yeah, Frank Gable" or say we knew that a certain person had information we needed only we heard from a person that they told them that you killed Michael Francke. We go to that dude and he says, "No, man, he didn't tell me that." And we give him the polygraph. He flunks that test. Did Frank Gable tell you he killed Michael Francke? He flunks that question. He flunked the polygraph concerning Michael Francke.

GABLE: He's having problems with inconsistencies passing the test. Why? Because the test ain't no good. See, the reason for that tests, is if they was admissable in court, they would use them. That machine is totally just crap. I mean, the only thing that machine is for is to get any person that sets down in that chair to talk before and after. I'm not stupid. I mean, () if it was admissable in court, you could sit down and say okay, well, let's just talk. You know, they're not admissable in court so why even take one. I mean I was taking one because I know I haven't did nothing. I know I have nothing to hide; nothing I have to

GABLE, FRANK E.
Interview

51

hide. I wouldn't be sitting right here talking to you if I was hiding anything.

BAIN: Do you think there's that many people who associate with you that would be telling us...

GABLE: As a matter of fact, you know what; you're saying that there's this many people and that many people. I don't think there's anybody but Janyne making those statements. I really don't.

BAIN: Well, Frank, I can assure you...

GABLE: Well, I mean, I don't believe you. I mean, you can say, "Yeah, I assure, yeah I assure." Great. File charges. In fact, I'm waiting for that. I'm waiting for them to file charges so I can just get this case off; 'cause I know when I go to court that the attorney's that all hang out,,, I mean half those people are speed freaks, dope fiends. They can't remember from day one to day two, let alone me telling them I said something but a bunch of lies, most of them.

BAIN: But you yourself ().

GABLE: That's right. I know when I get up on the stand, a bunch of circumstantial evidence ain't going to add up to squat. They are going to dismiss this case and let me go on out.

ACKOM: What about.....

GABLE: "shadow of a doubt."

ACKOM: Yeah, but Frank, Frank.....

GABLE: That's all I need.

BAIN: Is that what you're counting on?

GABLE: That's all I need to count on, even if all that is what I'm counting on. I know inside, right there in my heart. They can roast me for this and I'm still Frank Gable, doing the best that he can do.

BAIN: Yeah, but's it's always going to be on your mind.

GABLE: So what? No, it's not. It's not going to be on my mind.

BAIN: It's been on your mind ever since you been in here.

GABLE: I ain't hardly thought about it lately. Guards don't; once in a while they'll bring something up, go "have you heard anything?" Once in a while, they'll bring it up. It's like, "I don't care!"

GABLE, FRANK E.
Interview

52

If they bring up charges on me, great. 'Cause then I just know that if I go to court, I know this. I will be set free because I know that God will not let me get roasted for something I did not do and if per se, hypothetically, say, I did, I don't care, because I'm still being a Christian and I still believe in my heart and God's in there and my friends will know that I did not do that, whether I get convicted or not. You know, I still know inside that I didn't, whether I live the rest of my life in the penitentiary for something I didn't do, great! I'm still going to be the best I can be. I'm still going to get an education; I'm still going to try the best I can do. I'm still going to work on the case; I'm still going to listen to every piece of information I can because it turned out wrong. That's all I can do is do the best I can do. And I'm going to do that.

BAIN: If you were me and you were investigating this case and you were presented with the facts as we have them, where would you go? All we have is you saying you didn't do it.

GABLE: You've got 14 other prime suspects. I got information that you don't know about. Don't set here and tell me you got all these people, you know, 'cause I've got word from the inside. You've a leak in your headquarters up there. The information's getting out. You got to admit it. I mean, come on. I'm getting information from a State Police officer, so don't tell me, sit here and tell me, you got all these

BAIN: You get information from a State Police officer?

GABLE: That's right.

BAIN: Can you tell me who it is?

GABLE: No.

BAIN: Why is he giving you information?

GABLE: 'Cause he knows I didn't do it.

(Conversation I couldn't hear)

BAIN: Getting back to my question. Assuming you've never even taken a polygraph, I come down and interview you. You're a police officer. You go down and you interview a guy. "I didn't do it; I don't know who did it." I want you to help me on this.

GABLE: I'm about ready to quit this.

BAIN: I don't mean to hurt you.

GABLE: Well, you're just trying to throw it off on me. You're trying to

GABLE, FRANK E.
Interview

53

get me to say, "Well, like we think you did it," and we got all this evidence. No, you don't have squat. I mean, you wouldn't be down here if you had something. If you had something, there would have been charges filed about 2 months ago.

BAIN: The reason I'm here is you called me.

GABLE: I know, and it's like I called you down here because I'm giving you some information that maybe you can go in the right direction.....

ACKOM: Did it ever occur to you that, Frank,,,, did it ever occur to you that we don't need to talk to you?

GABLE: What did you come down for?

BAIN: You called us!

GABLE: That's right.

BAIN: We're here.

GABLE: If you don't need to talk to me, jam.

BAIN: I'm interested in everything you have to say. This is why

GABLE: Because you don't have nothin'! Because you're looking for somethin' you don't have! Why? I know, I'm not stupid.

BAIN: I can assure you that we do have

GABLE: You have something squat!

BAIN: We have several people who are known associates of yours who are saying you told them that you did it.

GABLE: Hell! Big deal! Big deal! Piss off. I want you to file charges and let's take it to court.

BAIN: I'd like to know what you'd do if we did. I want to believe you.

GABLE: I would look at that person, look at my record and they'll look at, you know, what's the possibilities of Frank Gable telling a Corrections person. I mean, what would I be doing there? I'm not involved with drugs at the penitentiary so that eliminates the drug connection. You know, I'm not a car burglar; it's not in my jacket nowhere. I never done a person-to-person crime as physically hurting anybody at all in my life. It's not in me except for my wife () and that was by total accident, you know.

ACKOM: I've got to change the tape.

GABLE, FRANK E.
Interview

54

Time is 7:36 and we're continuing the interview with Frank Gable and Paul Bain and myself, Fredrick E. Ackom.

(Conversation I couldn't hear)

GABLE: And then I would look at, okay, now I'm sure I made a bad record. You got to look at that in the past. You can't bypass that one, but then you got to look at the last five years and I haven't done alot and I'm not into robbery, been out a year and a half; I didn't do robberies, I didn't do burglaries; I didn't do no hard, you know, I sold dope and was in one fist fight out there this whole year and I carried around a couple of guns, I was no John Wayne cause I was on drugs. But this doesn't fit. The smell of it just doesn't fit Frank Gable. It just doesn't. You know, it's like the letter you got from the friend that knows me. He knows Keerins and Keerins testimony is as flaky as he is. The jailers here know it. It just doesn't fit. Most people know that. Family knows that. So I would look at those other people and think, why are they saying that. Like Keerins.

(Conversation I couldn't hear)

GABLE: Keerins, he's saying that. Well, people, I'll probably tell you why.

BAIN: Chris

GABLE: Chris Keerins?

BAIN: Chris Warila.

GABLE: Christ Warila? I've been in contact with him.

BAIN: Believe me when I tell you that Christ Warila did make the statement to our investigators that you know. (Gable laughter)

GABLE: Right! Well, if it comes to trial, Kris will get up on the stand against me. I'm confident. Why would he say it. I don't believe he did, you know. You're saying, "Why would he?" I agree. Probably, if Kris said that, it's because, has he been busted before?

BAIN: He didn't tell me that. He told....

GABLE: He might have thought, because he was pissed, because I worked for the police and he found out about it. One, his partner got dumped, Robert Cornutt. He got busted with \$75,000 dollars and pounds of wire. His partner, he thinks I did it.

(Conversation I couldn't hear)

GABLE, FRANK E.
Interview

55

GABLE: So, they think I snitched on Nick, his other partner. Nick Desantos had stolen guns and lab equipment.

BAIN: Why would you snitch on Nick?

GABLE: But Kris thought I was a police officer to start with, see. But Kris wouldn't say that. I mean

(Conversation I couldn't hear)

BAIN: Frank, I want to tell you (Frank interrupts)

GABLE: You told me last time that, you know, nobody failed the lie detector test. I don't believe you to start with so anything that you really say to me, I don't believe. So, I mean, you can tell me God is coming back and he would be here and I wouldn't believe you, because you struck me as being dishonest so I don't believe anything you say. You were dishonest with me. Because you told me I was the only one flunked the lie detector test and you told me that I was the only suspect. Wrong! You have 14 suspects and I can name you a few of them if you want me to. (

)

ACKOM: You want to help us, maybe one....

GABLE: Well, when it comes time, I'll do that if it's necessary (

).

(Conversation I couldn't hear)

GABLE: Those suspects that, you want me to looking at; I don't (

). It's like the one I figure, I think it's back to ()
Keerins. ()

ACKOM: See, your name is in the middle of all this. A question of interest. ()

GABLE: I mean, every bit of information I've been thinking of, I've gave you just like Keerins. At first, I didn't mention it in the first time we talked because it was like he's a chronic liar, you know. I mean, anything he said to me was like (

) and then after I sat around and then after I talked to my attorney and my other friends, my friends came back after that article came out and said, "Now look, man, he told me this," and I said, "Yeah, why is he saying that?" (

) Now why is Keerins throwing this off on you when he told you weeks prior to this. I don't know. I called my Dad and the day they (

) So, I said, "Why is he doing this." Is it for the \$25,000 reward? Is it maybe that he thought he was going to be released now? Get out of jail? I mean, you know, ()

GABLE, FRANK E.
Interview

56

I know right now that if I had any information, I could make a good deal right now. I could walk right out of here probably this evening if I told you who did it. I know that. (

) Do you think I would love to sit in jail here? Do you think I would put away the deal if I had information. You don't think I would pay to deal to get me out of here tonight?

BAIN: Why would Warila, why would Chris think that way? (

GABLE: Why? Because I know I worked for the police; it came out in the paper. Former inmate once worked for the police. Big letters.

(Conversation I couldn't hear)

BAIN: You found out from other sources Chris (

GABLE: Chris basically told me himself when I got out. When I was in jail in May and June and I got out in like towards the end of June and July and I went with the Keizer Police back up. When I got there, it was like he told my wife, "You know, your old man's a piece of shit, you know. He ain't no good." It was when I went up to his face, it was all, "Hey, bro, what's up?" Chris is so wishy-washy. I mean, if you tell me, you know, a pine cone falls and hits him in the head and tell him the sky is falling, he's going to believe it. Munchie used to go over there and tell him, now I'll wrap this one. Now we've been running together for 7, 8, 9 months, every day. I mean, me and him was almost closer than me and my wife except for the sexual part, right? I mean, up to Portland, back from Portland, staying at his house, you know, spending more time at his house than I was mine with my wife. Well, anyway, we did like misdemeanor crimes together, you know, shit up in Portland, you know, selling dope, cooking dope, having all his glassware in my house, all of it, in my house. He tells me to take out his garbage 'cause there's some slag in there and says, he don't remember. And he looks in my car and says, "What's my trash doing in there?" I said, well, you told me take it out and dump it. "No, I didn't." I want to ask you straight out, man. I want you to answer me yes or no, man, are you a cop? Are you working for any feds or bureau of police officers or anything like that? I said, Chris, come on, man. He said, "Just answer the question." I said, "Yeah, I am." You know, I mean. So Munchie would go over. We've been running together this long. I've never burned him; never shit on him and always give him the best deals I could give him and Munchie would come over and say, "Gable's over there saying you're a rat." People go off and come all the way back over there and say, "Well, you called me a rat?" You telling people I'm a rat? When it was somebody else telling me, you know, "Word out, doing paperwork over Chris over robbery."

GABLE, FRANK E.
Interview

57

(Conversation I couldn't hear)

GABLE: Chris has accepted the saying and I don't, it's like I don't believe he said that, but it's possible he said that. It's like possible, but I've never made the statement to Chris and I've never made that statement to nobody.

BAIN: As long as you're sure.

GABLE: It's like, I don't know.

BAIN: I wouldn't tell you, if it didn't happen. I'm sorry you think I'm dishonest with you.

BAIN: I was curious as to why you just sat there on it, without telling people.

GABLE: (). I don't know. The polygraph, like I say, hurt me. If it worked and it was good they would use it. So apparently them things aren't no good and that's why they don't use them. They're not admissable in court so they don't use them. A lot of people have had inconsistencies () and there's a lot of people that won't take them; a lot. They call me and told me, well, we want to eliminate you from the investigation, is all we want you to take the polygraph for. Now, I know I haven't had much of a good case so I go to take the polygraph. It's coming up being deceptive. It could be mirrors. I don't know how the thing works but it could be, you know, it's not the fact I killed him 'cause I didn't.

BAIN: Do you remember when you were () and I asked you ().

(Conversation I couldn't hear)

GABLE: Yeah, that's what you told me. I remember that, kinda'. That may have been the night Earle come over to our house, too.

BAIN: I don't want you to think I'm ()...

GABLE: I don't know. Like I say, I don't know.

BAIN: What you told me was that (interrupted by Gable)

GABLE: I could have been on blues as far as I know. I could have been on a rocket ship ride to the moon and back. I don't know.

BAIN: You told me you went home and stayed home and partied with 20 to 30 people. You couldn't remember their names. They were in and out of there all night. That's what you told me.

GABLE, FRANK E.
Interview

58

GABLE: I did. Just like I told you, I don't know. I could have been home; I could have been anywhere. I really don't know.

BAIN: You told me you went home and stayed home ().

GABLE: Possibly, I may have told you that. But I don't know if I did or didn't. I believe I did. I may have said, "Well, I might have went home." It's possible I might have been home. Usually that's usually, where when I pick Janyne (). At that time, right then, that fit. At that time I was running with a bad name. I was like getting ounces fronted from Mark and eight balls from Kevin, Charlie and Kenny Ferrell. It's like, I was usually home. People comin' to my house all the time.

BAIN: Now today you're sure you went to Chris' house.

GABLE: No, I'm not sure. I never have said I'm sure. I said I'm pretty positive that that may be where I was but I'm not sure. I don't know. It's like Janyne saying that was the weekend of Martin Luther King's birthday. There's days that I don't know whether it was () and I know what day it is between Saturday and Monday if Janyne works. There's days I couldn't remember if it was Tuesday or if it was Thursday or if it was Sunday.

BAIN: Why did you call Janyne from the jail, here, where you are presently incarcerated and tell her to tell the cops you were at Shelli's house on the night of January 17th?

GABLE: No, I told her I was at Shelli's house in the morning because, yeah, I did tell her I was doing it that night. Because after laying around and thinking, I remember Randy coming over knocking on the window; I remember waking up and I remember going home but then after I thought about it for a while, it was like, you know I'm not sure where I was because it was like I remember distinctively taking those clothes home to Janyne that day and she was pissed 'cause she goes, "You bring something home and you think you can stay out all night," and then after I picked her up at work, she made the statement that the police was there and asked her where were you and she said at home. Well, I distinctively remember making the statement to her, "I guess I can't tell them I was out with Chris dippy-dumpstering." I remember that statement. I've got it written on a piece of paper in my room.

BAIN: Why did you tell her on the phone that you were at Shelli's?

GABLE: I didn't tell her that.

BAIN: You didn't?

GABLE: No, I said I might have been there, but I didn't tell her that's

GABLE, FRANK E.
Interview

59

where I was.

BAIN: Why did you tell her that?

GABLE: 'Cause that's where I might have been. 'Cause I was either at Shelli's, at Chris' or (); I don't know, one of those spots, all the time. I'm never alone. I was with somebody that night. I'm never alone, even when I'm going to and from my house with Janyne or from our house to Chris', you know, somebody's usually riding along or I'm riding with somebody, () or we're going to his house quite a bit ().

(Conversation I couldn't hear)

GABLE: I don't know. Like I say, I'd love to tell you where I was. I'd love to tell you I was with Micky Goss and we was at 6:30 to midnight we were in the bowling alley bowling, but I can't tell you that.

(Conversation I couldn't hear)

GABLE: I do not know where I was the night on the 17th at all. I do know this, that I was not on that Hospital grounds from the time I picked Janyne up until the next time I took her to work. I know that I did not kill Michael Francke; that I did not return to that Hospital grounds; I was not doing no car burglary and that God is my witness, I did not kill this guy. And I do not know who did it. I can tell you that. I had no altercations with anybody that night. Nobody. I wore the same clothes that I had back home that next morning.

BAIN: But your not sure what you were wearing?

GABLE: The boots and shoes were the only two I had at that time; both of them are at Janyne's and my house.

BAIN:

GABLE: What's the difference? From what the State Police is telling me, that this guy was cut and he's losing enough blood that he'd make it from the steps and if he's in an altercation with somebody trying to cut him, he's defending himself. I'm smart enough to say, "Okay, now, if this guy is getting cut and he's got enough strength to walk from the car to the Dome Building, he's got enough strength just fighting back, and if he's getting cut, blood's going to be flying," 'cause I don't believe he was stabbed one time. They're trying to say that he was stabbed in the heart. It doesn't fit. If you're stabbed in the heart, you're going to die pretty soon, from what I understand from talking to people. Talking about cases. It just doesn't fit, you know. I'm looking; I've been cut

GABLE, FRANK E.
Interview

60

with a knife, trying to fight back. I've got several wounds on me, and you're trying to block, there's blood going to be flying. I've had blood just from this cut right here drip all down the front of my shirt, all over my shoes; my clothes are going to be stained. Somebody is going to see those stains. I came home in the same clothes. Those boots and those shoes would still be stained to this day. They took hair and blood samples from me when I was here. That only tells me that they have hair and blood samples. That only makes me more confident, that I know, (). So, that only takes us back to I'm not a suspect. I have information and I'm telling you I'm trying to get everything I can think of.

BAIN: And anybody that tells us different doesn't like you?

GABLE: Anybody that tells you different is that they're lying. They're straight out lying.

BAIN: Is that because they don't like you?

GABLE: I don't know why. It's like maybe they don't like me, maybe they know perception of me talking about the case to somebody like sitting around; it's like, "I don't know, Michael Francke got killed blah, blah, blah," well, me talking they might think, well, he knows and then by this afternoon he's saying I did it 'cause I talked about it.

BAIN: Well, who do you sit and talk about it with?

GABLE: I don't know. I mean, I sat around and talked with Kenny Ferrell, anybody from the joint. I mentioned it to Chris, but I told Chris, "Yeah, I went by the Hospital today and dropped Janyne off to work and there are police all over out there. I heard on the radio, that Francke died." Look, I heard it on the radio. That's the first time I knew that it was Michael Francke, on the radio, later on that day. I seen the thing, like 6:30 or 7:00 in the morning, crime scene thing, and I just kind of chalked it up as being a nut quite a bit later, in the afternoon, something like that. I dropped Janyne off at the house and we went back past that Dome Building and it was on the radio and I kind of () it was that person say, "Yeah, Francke got killed way back there," and I pointed at the back steps. I remembered that day, I remembered telling somebody that, but I don't remember who that was.

BAIN: What were you doing back on the hospital grounds?

GABLE: I wasn't on the hospital grounds. We drove right by there.

GABLE: Usually if I don't have Micky, or wasn't with Micky, I don't go that way because I don't know anybody there unless it's () dropping off some dope. Otherwise, I go all the way down

GABLE, FRANK E.
Interview

61

Hawthorne to Mission and down Mission Street to Chris'; no need to go all the way through town ().

(Conversation I couldn't hear)

GABLE: () I don't believe they're out to get me. I don't believe a lot of them said that and I think maybe out of fear, just to get rid of you guys, they might say any old thing. It's like more people wanting to talk, like Frank first thought of having Janyne go up there, I'm like, why is she going up there with you guys (), but I know that that's not her purpose. Your purpose is to take her up there, show you all my friends to you, maybe find somebody that's (). I know that and I could have told her, "Well, don't go up there, don't go up there," but what good would that do? In my opinion, she's out to get me anyway.

BAIN: Why?

GABLE: Because of her leg, because of her arm. Bad news. It's like, I feel like I don't know, I don't believe that she would do that to me. I just don't, but there's a part of me that says, "Well, I wonder if she's just getting () because she don't be (). She knows that she's scared of me. She's scared of me. I know that. There's no question in my mind. 'Cause, she might have told you some shit but that girl can fight with the best of them. You ask my Dad. You know I've got scars all over my body. You know, I've never,,, I got to the point where she was scratching and cutting me up so many times so bad, when I was just trying to get out the door, not fight with her, that I got to the point where I told her, "Look, if you slap me, I'll slap you back. If you want to hit me like a man, you'll get hit back." You know, that's broken everything I've ever stood for 'cause I've never hit a woman before in my life. (

) You know, I've got scratches on my back. You know she says I broke her arm. Ask her how I broke her arm. From her grabbing my neck. I'm standing here naked, telling, "When are you going to shut up?" She won't shut up and saying, "Why won't you shut up?" and she says, "Waaaaa!" And she's got nails and she's digging and so I just grabbed her hand and made her let go. And she falls out of the chair and I don't know whether that broke her elbow or if the fall out of the chair broke her elbow, but she doesn't even tell that part of the story. Just like her leg. You know, she accidentally cut by that blade. (

). Janyne doesn't tell that the morning she slugged me in my mouth and I didn't do nothing. Later on in the day, she rolls over because my leg is bumping hers and she's going to play the four year old game, "Don't touch me, don't touch me." I rolled over and just go blahhhhh. Yeah, back over my mouth and my body, cracked my ribs, you know and then get up and say, "where's your necklace," and start shining my shoe around. The thing falls over and breaks

GABLE, FRANK E.
Interview

62

my plate. I get up with the plate, both pieces in her hand, turn around, she goes, "Where did you get the earring?" and she kept saying I got this earring from a girl. I said, "I guess I got it from my girlfriend, is that what you want to hear?" She goes, "Well, tell your girlfriend I made you listen to shhhhh all down the middle of my back. So () I was just going to take () and I was going to cut her back. That was a total accident. Janyne doesn't say that. She told them that I held her down and sawed on her leg with this thing and then later on, two days later she's home and she's arguing with me and I'm sitting on the bed. She don't want me in the bedroom. It's my house. I invited her there. This is my family's house. She's basically trying to run me out of my family's house by telling them all kinds of this soup and shit, like how I beat on her but she doesn't add the part where she slapped me, cut my neck and arms ()..

BAIN:

GABLE: No. I just, you know, I love my wife; I'm still trying the best I can and I'd love to straighten out my marriage, but I really doubt that that's gonna' happen, you know, at this point. But I would love to because I still love my wife. I know that she's got her problems and I have mine. But she needs to own hers; I own mine. I know that I have an alcohol problem and a drug problem. I'm working on it.

(Conversation I couldn't hear)

GABLE: I have to be so close and serious with myself and you people right now because this isn't no game. You know, and I'm very aware of that. In fact, I have never been this serious in my life. It's like, to me, life was kind of like a game day by day. It was like, parties, party, party, go to jail. So what! But like I said, four years ago, I made a commitment to myself to change and it's like, I tried cutting a lot of the old friends loose and I relapsed and I got back around to thinking more like I could kick it.

BAIN: How can we clear you?

GABLE: I have no idea. The only way that you're ever going to clear me is you find the person who did it or somebody else confesses or somebody else that knows the person that did it says something. And if it comes to the point where you believe those people that are telling you this stuff and you file charges on me, I'm ready for that because, like I say, inside I know that I can deal with it. It's like, you know, I've sat up there and contemplated suicide over and over, just saying, "Okay, well, I'm, I can't deal with it, and I don't like people thinking I'm a killer 'cause I'm not. That bothers me 'cause I always stood firm and just hated

GABLE, FRANK E.
Interview

63

people that () people that used to kind of brag on that shit and how can () one little kid said he busted his little sister in the head with a baseball bat and his Mom and his Dad and kind of like, "So what?" and watched T.V. It's like how could a human being do that and just kind of think like, "So what?" I don't know, I () I would have told you that a long time ago.
(Conversation I couldn't hear)

GABLE: I never heard much on the case. I talked to her and she's told me that she didn't do it; that ().

(Conversation I couldn't hear)

GABLE: I don't know. It was something that was always in my mind. That's kind of why I was writing, just to see if she, you know, I've talked to her a lot, just to see. 'Cause I could tell on her if she did. (Laughing.) You know, that was in the back of my head. I was thinking (). I had her where she was thinking we was getting married one time and she was hinting around at it ().

ACKOM: Frank, did you ever have any kind of relationship with Shelli?

GABLE: () Shelli and I have been real good friends. I mean, we was in fact, where I would have left my wife for Shelli at one time, but then Dennis came around and she started going back towards Dennis. Shelli have slept in the same, you know, on the couch together. () Sex isn't as important; just being,,, feelings, you know that's more important. A hug to me is more important than diving into bed with somebody and saying, "let's do it," you know.

(Conversation I couldn't hear)

ACKOM: Starting a new tape. This is Detective Fredrick E. Ackom. It's November 3, 1989, time is 8:12 p.m.

BAIN: You getting hungry? (Gable laughter) Would you like something to eat first, or you already had something. How about if we order something? Remember the last time we were together, we ate sandwiches together? (Conversation I couldn't hear)

GABLE: I'm just getting so (). It's like the more and more this goes on, the more and more confidence I'm getting 'cause people are bringing word from the Penitentiary telling me to "just hang on, buddy," 'cause they know there's a guy getting ready to (). Just hang on, man. So that makes me feel good and then the next day this Kris Keerins come out in the paper and it's like, "Why is he doing that?" It's like the daily confidence; I've got all these witnesses that say ()

GABLE, FRANK E.
Interview

65

going to hurt me because I haven't did it. So it's like "Why not?" just do what's right. You know, so it's like I'm in here talking, it can't hurt me because I ain't did nothing. Then like I told them if it does, and they railroad me, so what? It's like if, I got to jail, it's like I told them, I said I know I'm not getting railroaded because it's too big of a case. (Inaudible) They're picking somebody out that was around there, that was a convict, that had a record (inaudible).

SALLE: I don't know what you guys have covered in here for the last (inaudible).

GABLE: I've never told anybody I've did that (inaudible) you know, I've talked about it (inaudible). It comes up, corrections, (inaudible), even though my wife worked there (inaudible). I seen it when I come by there, there was police everywhere. So as soon as I go to my friends, yeah, there's police all over (inaudible) anywhere.

SALLE: I wonder if you can tell me (inaudible).

GABLE: I have no idea, unless somebody told them.

SALLE: There's got to be a reason. There's got to be a, there's got to be a reason for (inaudible). There's got to be somebody you know, somebody that you know, have you ever thought that maybe one of your friends (inaudible).

GABLE: They'd be around the kind of people I know.

SALLE: Sure. And you're close enough in this group (inaudible).

GABLE: Well that's why I keep coming back to Keerins, man. You know, Keerins, Keerins - I was in county jail with him right, and I (inaudible) my attorney, my dad, my wife, another jailer, and three or four inmates will clearly tell you before I even got into the cell I thought he was set up on me because I thought I saw him that one night in a police car (inaudible) drive by and you know, peek through like this and then nod. Well the next morning I got to jail, he's my cellie. You know, and soon as I mean they let us out like ten minutes after I got on the phone, and told my dad "Man, they put in with this guy, this Keerins, it's like his brother was (inaudible) and the only thing he ever wanted to talk about was Michael Francke, Michael Francke, Michael Francke, every day. And like he would get on the phone and call Phil Stanford every day and the only thing he ever wanted to talk about. He'd bring me the paper every day "Look, look" and smile.

SALLE: Were you under the impression that one of the Keerins boys got arrested (inaudible).

GABLE, FRANK E.
Interview

66

GABLE: Right out of the gate, one of them did.

SALLE: No, he wasn't arrested for this.

GABLE: Well, he was picked up.

SALLE: He was arrested for escape.

GABLE: Right. Well he was arrested and suspicioned.

SALLE: Sure.

GABLE: And Keerins, when I was in jail with him, it was like he would leave me with a shadow of doubt just a small doubt. Like he would say - like that stuff they put in the paper about a car fluke and shit? He told me that, you know, and I think when my name come up as a suspect, he got nervous and got scared and thinks "Wow, he's going to tell them I told him and go off on me. That's what I think because if he's smart enough to think "Well, okay, now if say I (inaudible). Then, you know, he's gonna say, then he's gonna have to go back and they're gonna say well you're (inaudible). He's smart, so I'm thinking but the part that gets me the most out of that statement was the one (inaudible) Keerins. Because, Keerins didn't go "Oh, I don't know nothing about the killing, they're just trying to railroad my brother, and we don't know nothing about the killing, you know what I mean?" And he would throw them eyebrows and give me a shadow of doubt, right? But then in the paper he goes as far as to go "Gable told me, confessed this crime in February at (inaudible) house. I've never been to his house before. I've never seen him on the street before. The only place I've seen him is a couple of times in jail, and I already gave him a letter where my friend says we didn't clearly get along.

SALLE: Okay, who's your friend?

GABLE: Tony (inaudible).

SALLE: Who?

GABLE: Tony (inaudible). He's, he's in jail. He's a guy I knew.

SALLE: Is he in here now?

GABLE: No, OSP. Well, Keerins and them was in there, and Tony started going out with this girl that was their partners, you know, and so they all (inaudible) well, I backed Tony's play so they didn't like it. So they put me in jail with the guy (inaudible).

SALLE: Let's get back to this....uh.

GABLE: Person. Keerins is saying - this is the one that gets me the most

GABLE, FRANK E.
Interview

67

- Keerins says that I made the statement (inaudible) the car. But that doesn't take. An unlocked car - how long does it take? From the aerial photo I seen I believe it's like a state vehicle, I'm not sure, but it looked like a state vehicle in the aerial photo. For one (inaudible) from what the autopsy says, from what (inaudible) says is that his briefcase was there, all his stuff was there, his wallet was there, so apparently it wasn't robbery (inaudible). How long is it going to take to jump in a car, that's unlocked, grab what's ever in there, apparently there's nothing in there but he had his shit with him from what it sounds like, grab everything in there, and leave. From the distance he has to walk from the Dome Building to the car, I've seen it, I've worked there, I've been there, you know it doesn't fit. But Keerins is the one that basically told me that "Well I believe" he didn't say that it was the truth and he just said that it was somebody doing a car (inaudible).

SALLE: (Inaudible).

GABLE: And Crouse - he goes on (inaudible).

SALLE: You know John Crouse?

GABLE: No.

SALLE: Did they show you a picture of John Crouse?

GABLE: Right. Yeah.

SALLE: Uh, when uh, Paul came out the first time (inaudible) that you told him you were with Chris (inaudible). How do you figure out (inaudible).

GABLE: I can't. It's like I remember making the statement to my wife cause usually I'm always at Chris's - like he was the steady running partner, in fact, I spent more time there than, you know, me and my wife probably getting divorced pretty soon because I spent more time there than home. So, I'm either there...

SALLE: Kinda like my wife and (inaudible).

GABLE: Yea, I'm either there or Shelli's. And I remember my wife telling me, like that the crime scene happened and like I come to her at work she goes, "Wow that was the corrections guy that got killed (inaudible).

SALLE: So wait. What you're telling us then (inaudible).

GABLE: Right. From her making a couple statements, it just made me (inaudible) I was. Because, when we left there, she says when State Police were over today and they was questioning everybody,

GABLE, FRANK E.
Interview

68

and asked well, you know, where you know, where was I and my husband? And I told them well we were at home. That's where I remember making the statement to her, well I guess I couldn't tell her me and Chris were out dipsy dumpstering.

SALLE: What's dipsy dumpstering?

GABLE: That's going out (inaudible) you know, where the dumpster are, like at the Salvation Army and (inaudible) stuff there. Well, Chris collects glass. So we always go there looking for old bottles and glass and dipsy dumpstering is what we call it. And I remember making that statement to her, I wrote it down, and, I don't know if just like I (inaudible) I can't think. I would love to tell you, like I told these guys, I would love to say, you know, I was here and I was at - from 6:30 to, you know, to cover the whole time, but I can't do that.

SALLE: So you're pretty sure, I understand, you're pretty sure you were...

GABLE: I don't know, I'm, I'm not pretty sure if I was there, I'm not pretty sure if I was home, I'm not pretty sure if I was in Portland, I don't know.

SALLE: Well, (inaudible), and, uh, maybe you've tried this with the other guys, if you have, let me know (inaudible) if we can pick a point in time, uh, that you have a pretty good recollection of (inaudible) - just kind of, you know, give it a lot of thought and, kind of backtrack from there.

GABLE: I've tried.

SALLE: Oh, you've tried that?

GABLE: I've laid in there hours and meditated (inaudible).

SALLE: Do you remember the morning?

GABLE: (inaudible) yea.

SALLE: Okay, now you go backwards (inaudible).

GABLE: I believe (inaudible).

SALLE: And that's the best job you can do as far as laying in your room (inaudible).

GABLE: It's like, thinking back, but (inaudible) can't be sure. It's like...

SALLE: Okay, let me...

GABLE, FRANK E.
Interview

69

GABLE: (Inaudible) (interruption)

SALLE: (Inaudible)

GABLE: I tried that, too. I don't know where I left from the time I came there. I don't remember if I went home, or if I went over to Shelli's (inaudible) - days - (inaudible).

SALLE: (inaudible) Fred.

GABLE: It's like I've tried doing it, man, go forward (inaudible).

SALLE: You don't have a memory of being at Shelli's that morning?

GABLE: The morning that it happened? I mean like (Salle interrupts)

SALLE: After (inaudible) would go over there and (inaudible). Then where do you go?

GABLE: I don't know - I believe I went over to Shelli's because that, like that morning - well when did Keerins, when did they suspicion Keerins on this case?

SALLE: Well...

GABLE: Did he get arrested right away?

SALLE: Oh, well, within a few days. I don't (inaudible)

GABLE: Oh, well, a few days then (inaudible) - that's not (inaudible)

SALLE: You think, uh, because Chris being there?

GABLE: No because when I went to Shelli's, Chris' old lady was there.

SALLE: What's her name?

GABLE: I don't know what it is (inaudible) she has, like, kind of brown hair and it's kind of long and straight (inaudible) cause I went over there and I said well man there's all kinds of cop cars, you know, when today or a day or so last (inaudible) day up there, you know where my wife works all kinds of cop cars. She goes "Yeah, they arrested my old lady for, you know, that." I mean, she said they arrested my old man for that

SALLE: You and Fred have probably been over this before (inaudible). Why are we where we're at with you on the polygraph?

GABLE: Why are we where we're at? Because - why, why did I fail the polygraph? Well, because I don't know what questions I failed and the ones - in my opinion. Polygraph, it don't work to start with,

GABLE, FRANK E.
Interview

70

that's why they can't use it in court.

ACKOM: (inaudible)

GABLE: Well, then, it's proven to be inconsistent.

SALLE: What I need to know is, you have no idea what the reason is that you did the way you did on the polygraph. Let's just...

GABLE: Why?

SALLE: Assume, let's not even discuss whether it's admissable or whether it isn't.

GABLE: Well, because I had information about what Keerins had told me, and I kept saying (inaudible) one of the questions was "Are you withholding any information?"

SALLE: What did Keerins tell you?

GABLE: He told me basically that, he didn't tell me, he kind of run down what he believed, you know, happened abut, you know, it being a car burglary and blah, blah, blah. And it turned out to, you know, he said, and that's the word he used, was fluke. (Inaudible) - and I thought well (inaudible), and I'm thinking to myself (inaudible) guy, you know. I think somebody was doing, you know, a car burglary and (inaudible).

SALLE: He tells you he thinks somebody was there?

GABLE: Yeah, but then, he was going so far as saying, you know, that I, you know, but then he'd say, "Well, but I don't want to talk about this case no more, you know what I mean, cause I didn't do no killing and I don't know who did," and then, he'd throw his eyebrows at me like - leaving me with a shadow of a doubt. So that could be one area where I didn't say nothing because I didn't - kinda sounded (inaudible) chronic liar.

SALLE: (Inaudible)

GABLE: And then Keerins throws it out on me, and goes so far as saying "John Lee Crouse has nothing to do with it." Why did he do that. He could have just threw it off on me and said "Yeah, Frank Gable told me this, blah, blah, blah, blah, blah, blah, blah." But he went so far as to say John Lee Crouse had nothing to do with it. That part gets me the most. Why did he say that?

SALLE: Who told you that?

GABLE: It was in the paper. That's what he told Phil Stanford. And Phil Stanford told my attorney that. Phil Stanford told my attorney

GABLE, FRANK E.
Interview

71

(inaudible). So you think I'm close enough to the person that did it that they're trying to dump it on me?

SALLE: Well, we're trying to figure it out and we need your help.

GABLE: (Inaudible interruption)

SALLE: I know you're trying to help.

GABLE: It's like, you know, I ain't killed this guy, man, and, like I told Fred, (inaudible), I would love to help you guys.

SALLE: You've heard this story many times before - (inaudible conversation) It's kind of like painting a picture. We can paint a picture over there, and the picture we have right now, the picture we have right now is of Frank Gable (inaudible conversation) about picture

ACKOM: Sandwich (inaudible)

GABLE: Enjoy

- door closing -

SALLE: At any rate, we need your help to do that (inaudible conversation) Remember the holiday?

GABLE: (Inaudible conversation) just like (laughs) shine your shoes.

SALLE: Uh, so you can kind of explain away up to this point (inaudible) if you found out - if I told you that five more people told us you told them that you did it, who'd come to mind? Who would you think would (inaudible)

GABLE: Randy, Janyne's brother.

SALLE: (Inaudible) one at a time. Why would Randy tell us that?

GABLE: Because. He thought that I owed him money cause they gave us money to invest in drugs and I paid him back some and double and he didn't like that. So, he cam over and we got in a fight and I beat him up.

SALLE: When was this? (inaudible)

GABLE: Right around in that area.

SALLE: So you're saying because you owe Randy (inaudible)

GABLE: I have no idea, but I know I'd never talk to Randy because I don't like Randy that much, and I know Randy has a big mouth. And

GABLE, FRANK E.
Interview

72

everything that I've told - I tell him, he goes and tells his mom. And I know that. I knew that prior to ever...

SALLE: Who else (inaudible)?

GABLE: Munchie, you know, Scritchfield. Because he knows that I know that he's got a lot of beefs, you know, smash and dashes. (inaudible conversation)

SALLE: (Inaudible)

GABLE: So I told him, because he snitched on us one time, right? On two cars, you know, there's these two cars stolen and I don't know who stole them. ?? he thought I did and he told this guy Earl. So he comes over the scanner and says blah, blah, blah, you know, he said that I know the occupants of the car. Well, I knew the only one that knew that was Munchie. So I go up to him, I said "What are you doing? Ratting me or something?" He goes, "What, what?" He denies it, right. So I tell him, I (inaudible) my friends, "Hey, this guy's lying, man."

SALLE: I guess I don't understand -

GABLE: So...

SALLE: Why?

GABLE: He fired a couple shots with a pistol at me. Why would he do that? For one, I went around and spread that he was a rat. And two, he fired a weapon at me. And three, he knows he was doing all those smash and dashes all over Salem, Portland, and Lake Oswego, and he knows that I know he did it. I know where most of the stuff is that he sold.

SALLE: (Inaudible) if Munchie gave you up on this, if he did that, and you know all the shit on him, wouldn't you kind of think that if you're going to rat him off (inaudible) revenge (inaudible).

GABLE: What difference would it make. You know as well as I, like I told these guys, you know as well as I do that the state would drop three or four felonies, plus give them two or three, for more free ones in the future, to anybody that dumps on this case. Oh yeah, they'd give them two or three in the future to somebody who dumps on this case.

SALLE: (Inaudible)

GABLE: There's a \$25,000 reward, you know. Keerins....

SALLE: I think you have, we've got three left (inaudible)

GABLE, FRANK E.
Interview

74

killed Michael Francke (inaudible).

GABLE: They say I said?

SALLE: This is all hypothetical, ok? Do you understand what hypothetical means?

GABLE: right.

SALLE: For the sake of discussion, uh, don't you think that, uh, you know, the five people that you've come up with are in a circle of friends. That, uh, there really is five people that have told us.

GABLE: Um hum.

SALLE: (Inaudible) But take any five people. Don't you think it's kind of a coincidence that they're all telling us basically the same story? Variations of the same story?

GABLE: Um hum, I would say in some circles that they all know each other, they've all talked about it, so they all probably, just act like nah, nah, nah. So, they all kind of go well (inaudible) you know, why not say that.

SALLE: Well, does....

GABLE: But, you know, like I know I've never said that statement, so I....

SALLE: Ok, the long and the short of it is, Frank, that you can't explain it away, (inaudible) and it doesn't float. You know this kind of isn't our first rodeo, ok? (inaudible conversation). What we do - there's got to be a common thread in here (inaudible) the first (inaudible)

GABLE: Man, I've thought of - I've thought of everybody, I mean, I've thought of everybody, I thought of, you know, something came out in the paper that said I had an article of clothes, something that, you know, belonging to Michael Francke or that I had, or sold, or something or (inaudible) I just heard about it (inaudible). And it's like I've thought of every knife I've ever owned, who it came from, who it went to, every knife I've seen, any person I've ever seen that maybe had blood on them, anything, if I picked up anybody in that area, if I seen anybody in that area, if anybody said anything, you know, and I remembered, you know, these kids at Burgess' saying they thought maybe a car burglary, you know, jockey boxing, and they had to run. Well, why did they have to run? That right there is in same area.

SALLE: (inaudible)

GABLE: Burgess had three kids staying at his house, like 19 to 23.

GABLE, FRANK E.
Interview

75

SALLE: (Inaudible conversation)

GABLE: They had to run. Well, why? You know, and that's right in that area. I've tried everything that I could think of, possible (inaudible) and all that I know is even if I had just a little bit of information, I know I'd walk out of this jail tonight. I know that.

ACKOM: Frank, along with what he said about the five people, the scenario he gave you about the five people, how do you think, assuming that those five people came to us and told us this story, or if we went to them, how do you think they come about telling these guys? Do you think we just walked up to them and they started telling us this?

GABLE: Man, I think Janyne went around taping all them because that's what you took her out there for. I think.

ACKOM: Well....

GABLE: Either, she went around, and she may have told them that, well they're investigating, (inaudible) like when they let me out of jail and I went around up there when I was working for the Keizer Police Department.

ACKOM: Suppose that...

GABLE: Telling, yeah, they're investigating me for the Michael Francke killing.

ACKOM: Suppose that she did that. Suppose she went around and pointed out the houses where these people live. Not that they had something to tell us, but that these were people that Frank knew at, at the time. And then we go around and we talk to all these people. How do you think they would come about telling us?

GABLE: It's like I just told you.

ACKOM: Meaning if we started questioning about it you think they'd just give, give that up right now, or do you think...

GABLE: I have no idea, I don't, you know, it's like I've told you, I've went around up in Salem when I got out of jail, it's like, for me to get out of jail for ex-con in possession of a firearm, theft, come on, I mean it's like, you're in possession or you're not. I get out of jail, so I go around telling people well yeah, they let me out of jail, Janyne copped to the pistol, they were investigating me over the Michael Francke killing, but, you know, it's no longer happening. You know, blah, blah, blah. You know, they could have took whatever they wanted from that. You know, and

GABLE, FRANK E.
Interview

76

ran with it, you know, I don't know. But, I have talked about, you know, being investigated by Michael Francke to people. You know, but that's as far as I ever went, I never said that I killed Michael Francke, I never said that I had knew anybody that killed Michael Francke, and I've never said ever, I've stabbed him, because I've never stabbed nobody. Never. So, if they can take me making a statement, well, yeah, they're investigating me over the Michael Francke killing, then go with whatever they want to go with. You know, and if they're mad at me they might say anything. You know, if they, you know, they took that as being, yeah, he told me, you know, blah, blah, blah.

ACKOM: What if...(Interrupted by Gable)

GABLE: But I'm not stupid, see. So who is going to go around and confess it happened, I mean that doesn't fit, I'm too intelligent for that. My record shows that. My record shows that. It doesn't fit. I would not do that. It just wouldn't happen. If I knew who did it, I would definitely tell you, because, I, like I said, I (inaudible) then I'd get a \$25,000 reward. Unless I was involved with it, which I'm not. Because I would be trying to strike the biggest deal I could make. Ain't it obvious I ain't trying to strike no deal? And I'm trying to point you guys in the direction to help you out because I believe that's right. And I believe if I can give some information to get somebody that killed this guy, I want to do it. There's guys down here in the jail, (inaudible) "Well, you know, that might be a mistake talking to them.: Well, how could it be a mistake. I don't agree. You know, how's that going to be a mistake? That can't do nothing but help me. Because I'm not gonna say nothing about I did do it, and I'm not going to say nothing, about the only thing I can say is "Well I know this guy did it." And (inaudible) so that can't hurt me. I know that. I don't know, if there's five people saying that I told them that, I would say that you have five bona fide liars and that maybe somebody's telling them that...

ACKOM: What if...

GABLE: And they're living with it.

ACKOM: Frank, what if a couple of the five people told us things, not only told us that you told them that you killed Michael Francke, what if they told us things that only the killer would know?

GABLE: Well, then I would say let's take it to trial because we got a bunch of hearsay evidence, we've got hair and blood samples taken, that tells me if there's hair and blood samples, mine aren't (inaudible). We have almost every piece of clothing I've had from that time, my boots and my shoes. The only two pair I've had (inaudible). I have a state policeman and some people that, you know, they're telling me that I ain't involved. I mean it's like

GABLE, FRANK E.
Interview

77

they think I've got information, but I don't.

ACKOM: How does the state policeman contact you?

GABLE: Through another person.

ACKOM: You're not calling (inaudible). Their telling one of your friends and then they get in touch with you, is that it? Is that the source close to the investigation?

GABLE: You know as well as I do you guys got a major leak up there. I mean...

ACKOM: Is that the source close to the investigation?

GABLE: Close, close to the investigation. You know, that source talks to my friend and my friend talks to me. It's like, you have 14 prime suspects and I'm just one of them (inaudible) like you guys say. Just one of them. (pause) And like I said, it's like, you know, the autopsy report comes out all blacked out, you know, that only tells me that there's information in that thing, and if they have information they would have arrested me for it by now. If you, in fact, say that you got all this stuff, I'm here. I would have been arrested for it.

ACKOM: We don't have to arrest you. You're already arrested.

GABLE: I know, it's but, charged. Because you know as well as I do, they need to get this over with because a lot of heat on you guys.

ACKOM: Well...

GABLE: to get this over with. It's like, coming on down through the line. I mean, I've been told...

ACKOM: Maybe we don't want to mess it up. I mean it's gone a year, er, nine months.

GABLE: And the longer it goes, the worse it gets. Because that's a...

SALLE: Who's your best friend?

GABLE: Who?

SALLE: Yeah, if you had to pick (inaudible)

GABLE: God (interrupted by Ackom)

ACKOM: At that time.

GABLE: At that time?

GABLE, FRANK E.
Interview

ACKOM: Okay, if you were out doing any kind of caper, uh, that there's (inaudible)

GABLE: I wouldn't go out and do no caper.

ACKOM: Well, if you were doing anything that you weren't supposed to be doing like getting drugs...

GABLE: Selling drugs?

ACKOM: Yeah.

GABLE: Right there (inaudible)

ACKOM: Mark would be there?

GABLE: Yea, because he was my main connection at that time. I was getting ounces a week (inaudible). Several pounds of (inaudible) were going through him through my friends.

SALLE: Do you think Mark would give you up?

GABLE: (Inaudible) with Mark. Mark was in jail with me at the same time Kris Keerins was, and I told Mark that I think this guy Keerins tapped one for information, er, like everyday I was in the paper, he would talk about shit and try to, like, get that shit to fit with me and go, well, (inaudible) like he'd talk about my clothes, or then he'd bring, bring this, like, composite drawing up and say, "Well, doesn't this look like you, kind of?" (Inaudible) got that big old mustache, and like I can't even grow a mustache. No, it doesn't look like me, as a matter of fact, I wear glasses. (Inaudible)

ACKOM: You wouldn't give him up, and he wouldn't give you up.

GABLE: Sure, he'd give me up. He'd roll me in a minute, I think.

ACKOM: You think so?

GABLE: Yeah, he's rolled to the police already.

ACKOM: About you?

GABLE: No, about (inaudible), I mean he's told them, you know, about how much pounds of (inaudible) he was selling and automatic weapons that he'd converted over.

SALLE: Who can you really trust, along those lines (inaudible) (interrupted by Gable)

GABLE: Trust in what? I mean, I'm not going to go tell anybody about

GABLE, FRANK E.
Interview

80

(interrupted by Salle)

SALLE: Say, say you went out and did a caper (inaudible) (interrupted by Gable)

GABLE: A robbery.

SALLE: (Inaudible)

GABLE: A robbery? Who would I confide in?

SALLE: No, say you went out and did a crime like, yeah, who would you confide in? Who could you do that with that wouldn't burn you?

GABLE: No one.

SALLE: (Inaudible)

GABLE: Who?

SALLE: (Inaudible)

GABLE: Kenny Farrell.

SALLE: Pretty straight up (inaudible) right?

GABLE: Yeah.

SALLE: (Inaudible) How about the...did you do...you did a robbery (inaudible) you were with, a...

GABLE: Joel Brachtl.

SALLE: Yeah, (inaudible) that guy?

GABLE: He's a rat, and he was.

SALLE: (Inaudible) the robbery.

GABLE: Um, hum.

SALLE: (Inaudible)

GABLE: Yeah.

SALLE: Did you do the robbery?

GABLE: No.

SALLE: I can't figure out why (inaudible).

GABLE, FRANK E.
Interview

81

GABLE: I hate that one, man. I really do, I hate that one (laughs). I hate that one.

SALLE: You hate that robbery?

GABLE: Yeah, I do. I didn't do that one.

SALLE: (Inaudible) did Joel do time?

GABLE: Huh? Very little. See, him and another guy did it and I bought the shit from then. I mean, I knew they were doing it, and they came straight over and this lady says, "Well I seen you, you know, because of this, this, and this (inaudible)" (laughs) you know. I mean, he looks similar like me.

SALLE: Did Ball skate on the deal?

GABLE: Yeah. He never did get arrested.

SALLE: But Farrell, he's a pretty stand-up guy (inaudible).

GABLE: About as stand-up as they come, as far as I'm concerned. I mean, I don't know, I...

SALLE: That's what I was getting at. Is he kind of like your best friend? (Inaudible).

GABLE: I don't have a best friend out there. My wife, (inaudible), I don't trust my wife. I don't trust nobody, it's like...

SALLE: You don't trust (interrupted by Gable)

GABLE: I've got a poem in the thing that I wrote several weeks ago. It's like, there's a line that you do not even pass, or trust (inaudible). Doing the crime is wrong. If I do a crime I do not go talk about it to nobody. And I've done a lot of crimes in my past, there's a whole lot of them. You know, I mean, I could clear up books and books and books and books and books of crimes that I've done. But, I don't do crimes no more. When I got out of prison, my (inaudible) was not to do crimes, I mean, I've done some petty shit, going up to Portland and, you know, going down in basements and getting into them, a, storage cabinets and shit, you know (inaudible) shit, you know, with Chris, but that's it. It's like, um, I ain't did no robberies, I ain't did no burglaries, I ain't did a car thefts, I ain't, you know, with Earl and them - Earl stole a couple cars, you know, he got me in the thing and then tells me I stole the car.

ACKOM: Childers?

GABLE: Childers. You know, we're cruising around and he says, "Yeah, I

GABLE, FRANK E.
Interview

82

stole this car" it's like, "Oh wow, I'm gonna sell it" and I'm working for the Keizer Police Department (inaudible) so I'm staying with him because I'm going to get him busted.

SALLE: Is Earl a stand-up guy? Do you think you could trust Earl?

GABLE: Earl (inaudible)

SALLE: Let's, let's use the (inaudible) (interrupted by Gable)

GABLE: Yeah, yeah, Earl's a real stand-up guy, I think. I don't think he would talk to the police, I don't. It's like, he's been busted several times, his (inaudible) several times (inaudible) and been busted. As far as I know (inaudible). Most of the people I know are stand-up (inaudible) Keizer Police Department. They told me "Well, this guy's rolled and this guy hasn't and, well what about this guy?" and they showed me his picture, so that's only obvious that they're looking for him. Like Jerry Paul Baker. It's like, he started to roll, he made a deal with them and backed out on it. So they were pissed at him, they wanted him. So I know that he'd rolled to a certain extent, so if heat was put on him, he'd roll all the way. I mean, you gotta give police a certain amount of information to even get out of jail. (inaudible) get out. It's like, I do not trust nobody. it's like, I, if I did a killing, I would not talk to nobody. I mean, that's obvious. I mean, who (inaudible). That would be, be the God dangedest fool I ever met in my life if he (inaudible) confessed to capital killing somebody (laughs)

SALLE: What's a capital killing?

GABLE: A killing of like, what'd you say? It was like any police officer

ACKOM: (Inaudible)

GABLE: Police officer, anyone in the Corrections Division, you know, punishable by death or life in prison. I don't tell people I go do, uh, sell dope, let alone doing a crime. You all know (inaudible) (laughs). (Pause) I was talking about all the (inaudible) that the guy had, you know. Like a lot of people keep going "Well, maybe if, it was corrections involved, you know, drugs, you know, he was going to bust a drug thing." And then I think, well, maybe so. And then my says "Well, who better to do it would be somebody inside the prison, bring him out, have him do the hit, take and put him back in, let him out, (inaudible) his parole and give him his money and say, "Ok, good work." And then we'll never see you again. That, you know, that would be the best way to go there. I mean, if they wanted to get away with it and this guy not to get caught, well take somebody out of prison to do it. If it was a corrections hit, just use the prison.

GABLE, FRANK E.
Interview

83

SALLE: Do you think you were probably or maybe over at Chris Warila's the night of the 17th?

GABLE: Probably or maybe, uh, he could have been at my house.
(interrupted by Salle)

SALLE: Do you have any idea what you were wearing - inaudible -

GABLE: It's like I told them...

SALLE: Did they ask (inaudible)

GABLE: I had either on my acid wash pants or my blue pants. At that time that's the only two pants I had (inaudible) and I still have those and I still have (inaudible). (Inaudible) boots or my Spaulding tennis shoes (inaudible).

ACKOM: (Inaudible) boots (inaudible). Brown top

GABLE: And as far as shirts, you know,

SALLE: Did you ever (interrupted by Gable)

GABLE: Usually wear tank tops

SALLE: Did you own a trench coat (inaudible).

GABLE: Kenny Farrell had a, like a, black trench coat and one night Chris and I was dippy dumpstering I got a, uh, like uh,...kind of like that color right there trench coat.

SALLE: What color?

GABLE: You know, kind of like (inaudible).

SALLE: Tan?

GABLE: Yeah, it's like a tan. I got it out of a dippy dumpster (inaudible).

SALLE: What length was it?

GABLE: Um, it was like (inaudible) I still have it (inaudible) and I thought, well, maybe that's the article of clothing they're talking about, I mean, it doesn't automatically fit, you know, it's like, um, that (inaudible) the article of clothing they're talking about, Gable in a trench coat, I wore it all around. I mean, like, (inaudible) wore a trench coat around at that time, I don't know (inaudible).

SALLE: Tell me about the trench coat.

GABLE, FRANK E.
Interview

84

GABLE: Just a trench coat I found (inaudible).

SALLE: (Inaudible) what length was the trench coat?

GABLE: (Inaudible) it's a London Fog. (Inaudible conversation.)
(Inaudible) digging in the thing and I showed Chris it and "Yeah,
that's kind of cool" (inaudible). I put it on and "Hey, yeah, get
down," you know, (inaudible) that's what I put all the clothes in
and folded it up (inaudible).

SALLE: Now, does this, uh, London Fog, does it have a belt?

GABLE: Um, no.

SALLE: Does it have belt loops?

GABLE: Um, I don't think so.

SALLE: Do you know what an Epaulet is? You know the kind of strap thing
on the shoulder.

GABLE: Yeah, it's got those.

SALLE: Does it have those? Where, where is it now?

GABLE: I believe, I believe, seems to me, my mom's, if it's still there.
I don't know if it is or not. (Inaudible) the last place I
(inaudible). It was in all our stuff, unless she's moved it. Or,
no, maybe not. (Inaudible) Munchie might have stole that, or
well, you know, borrowed it and never brought it back. He borrowed
a lot of my shit and never brought it back. (Inaudible)

ACKOM: Continuing the interview with Frank Gable, Detective Ackom, and
Sergeant Salle.

GABLE: I got that from (inaudible). Never did wear it (inaudible) wore it
to work a couple times (inaudible). (Inaudible) it was real long.

SALLE: For the purpose of the tape, Detective Ackom is stepping out of the
room.

SALLE: Well, (inaudible) uh, that's what's really (inaudible
conversation).

GABLE: Who do you guys really think did it?

SALLE: Hmm?

GABLE: Who do you guys really think did it?

GABLE, FRANK E.
Interview

85

SALLE: Who do I think did it?

GABLE: Yeah.

SALLE: I think you did.

GABLE: Do you really?

SALLE: Yeah, (inaudible) gonna be honest with you (inaudible) or be dishonest with you (inaudible). Uh - (pause) - I don't know what happened there (inaudible) (interrupted by Gable)

GABLE: Michael Francke was great big, thought, huh?

SALLE: (Inaudible), about 6'4".

GABLE: I didn't know that, I thought he was about 5'10", 5'8", 5'9", 5'10", 160 pounds is what I heard (laughs).

SALLE: Uh, I hope that, uh, (inaudible) recall (inaudible) it's real important (inaudible).

GABLE: I don't remember at all. I ain't did it. I don't know who did it.

SALLE: Well, ah....

GABLE: The best thing I can say is, let's take it to court, you have a bunch of circumstantial evidence, a bunch of people saying something that my attorney's gonna just (inaudible) them.

SALLE: What I'm basing what I think on Frank, is (inaudible) (interrupted by Gable)

GABLE: (Inaudible) that's like saying it snowed outside last night.

SALLE: (Inaudible) that you ask me what my opinion was, well, my mind can be changed, just like yours can. You know.

GABLE: And if I could change your mind, you don't think I would?

SALLE: Well, I think there's something here we're missing (interrupted by Gable)

GABLE: Come on, I mean, I'm with you every step.

SALLE: That's what we're here for, Frank, (inaudible).

GABLE: Are all those five people saying that I told them, or are they saying somebody told them I told them?

SALLE: You.

GABLE, FRANK E.
Interview

86

GABLE: They're saying I told them. That takes me back to saying that they're lying (inaudible). I have, like I said, I have talked to people and said, "Yeah, I'm being investigated for the Michael Francke killing, they think I killed him. But, I made sure I told everybody, "Now I did not kill this guy."

SALLE: How many people (inaudible) how many people have you told that to? (Inaudible).

GABLE: Hundreds.

SALLE: Hundreds? What time frame?

GABLE: From the time that they first questioned me on it in June (inaudible) now.

SALLE: (Inaudible). Name some names.

GABLE: No.

SALLE: (Inaudible) some names for me?

GABLE: I ain't going to play no name game.

SALLE: No, I don't want to play a name game, I just...

GABLE: (Inaudible)

SALLE: Okay, I understand (interrupted by Gable)

GABLE: What are we going to do man. You're sitting there telling me that you believe I did it, and I'm sitting here (interrupted by Salle)

SALLE: No, I said I think you did it.

GABLE: Oh, that you think I did. And I'm sitting saying I know I didn't and I'm trying to help you. And, why would I call you down here, I mean, that doesn't make sense.

SALLE: You're right, it doesn't. I mean, the reason we're here, as I told you two or three times (interrupted by Gable)

GABLE: I am a Christian. You know, I, and I told, like I told this guy over here, Fred, you know (inaudible). I love my daughter with all my heart. May God strike (inaudible)

SALLE: That's why we're here.

GABLE: I don't know, I've never told them that.

GABLE, FRANK E.
Interview

87

SALLE: (Inaudible) and what we need to know, is (inaudible).

GABLE: Every jailer in this jail, every inmate that I come in contact with, basically every person on the outside, I've told it to Jerry Paul, I've told it to Debbie, I've told it to Chris, I've told it to Shelli, I've told it to Dennis, everybody that you know that I've contacted. Jean Hathaway, she knows. Everybody that you know that name, I've told. (Inaudible conversation). It's like.

SALLE: (Inaudible)

GABLE: It's like, we're playing process of elimination and you're trying to get all these people to say "Okay, Frank did it." And then these guys saying "Okay, (inaudible)" Now, you know, I know I'm being a fool (inaudible) for even talking to the guy.

SALLE: Well, back up. Back up, hear me out. I'm not here to, uh, (interrupted by Gable)

GABLE: You ain't here to get me off (inaudible).

SALLE: I'm here to get you off believe that, Frank (interrupted by Gable)

GABLE: Oh, come on.

SALLE: I'm here to get you off if (inaudible) (interrupted by Gable)

GABLE: (Inaudible) you're here to figure out anything you can to try to nail this case on me. If you think I did it you're going to go for that. You are not even going to be looking at anything else, I mean (inaudible) (interrupted by Salle)

SALLE: I'm not here, I'm not here right now to get names from you to go talk to to ask if Frank said that he killed Francke. (Inaudible) already (inaudible).

GABLE: I know it.

SALLE: What I'm trying to do, is figure out why, if you didn't do it, why those people are telling us that you said that you did.

GABLE: Like I say, if I make a statement they can, it's like, my wife told them that I made the statement to her, I know, she said that Dennis, Delong, or Gause, or whatever his name is, was there and Kenny Farrell, and that I made the statement "I know what happened." Anybody can make that statement.

SALLE: Sure. That explains it. If Gause or Farrell tells us that, that kind of explains that, doesn't it?

GABLE: That's right. So, you know, when you tell your story and I tell my

GABLE, FRANK E.
Interview

88

story, and I say no that's not what happened and I know what happened, and then you get my story. That's what that was. I remember making that statement (inaudible).

SALLE: Well, we're kind of playing cops and robbers here, and I'm being up front with you, Frank.

GABLE: Why don't they...

SALLE: You asked me what I thought, but my (inaudible) I need a direction to go here...

GABLE: I gave you directions. I fully think Keerins (inaudible). Because in jail (interrupted by Salle) he played me.

SALLE: Tell me everything. Okay, you told me that (inaudible) Keerins.

GABLE: I'm thinking Keerins, his brother, and that guy Crouse. Because there's just no reason for him to give me that shadow of a doubt because he thought I was pretty stand-up, I mean (inaudible) you know, but, the only funny thing, I think, actually, he's just a publicity seeker, because (inaudible) he'd call me every day. There's a reward out for it, he's trying (inaudible).

SALLE: (Inaudible).

GABLE: That would be what I was thinking. But, what if, the shadow of a doubt is thrown at me (inaudible).

SALLE: Um hm.

GABLE: Which, you know, would fit.

SALLE: Um hm.

GABLE: But, the part that I don't understand is he could just say that. So, why does he (inaudible) does he and Crouse know each other? I don't know the guy Crouse.

SALLE: Okay, well, why do you think it's Crouse?

GABLE: Because of the papers. Well, why would he say that. Why would he go as far as saying "Well, Frank told me it was a car fluke and I came to his house in February.

SALLE: Crouse never said that.

GABLE: No, Keerins did. Keerins is saying that. And then Keerins says that I was in his house, I confessed to him. I've never been to his house, ever. I've never seen him on the streets, ever. Only in jail and prison in Marion County. And then he throws in the

GABLE, FRANK E.
Interview

89

last part of the article with Stanford that "Gable was the one that did the confessed killing and, he came up on him and you know the rest of the story." And then it goes on and it says "But the guy John Lee Crouse had nothing to do with the killing." Well why would he say that. I mean, it would be great, I mean, if he wanted to dump it, dump it. Why did he go as far as saying that. That's my question.

SALLE: Um hm.

GABLE: (Inaudible). Is that the person, when he was going "You know what I mean?" Throwing me that shadow of a doubt, is that the person he was talking about? Why would he throw that guy in there? You know, there's 14 other suspects.

SALLE: Do you know Chris?

GABLE: His brother?

SALLE: Yea.

GABLE: Um hm.

SALLE: Do you know him to see him?

GABLE: (Inaudible) what?

SALLE: Do you know (inaudible).

GABLE: I know him if I seen him. I seen him in prison. I (inaudible) Toby and....

SALLE: Do you know any of them?

GABLE: (Inaudible) I showed them a letter I (inaudible).

SALLE: Okay, well what if, help me out here, why is the, what you're telling me, I guess, is that, uh, correct me if I'm wrong, Mike picks you to lay this on in the press because you're going to, you're assuming that he knows Crouse and he's going to help Crouse get out from under (inaudible).

GABLE: Well, (inaudible) his brother? Well, why would he dump it on me? I'm the first suspect that comes up, besides his brother. And the guy, Crouse. And then why (interrupted by Salle)

SALLE: (Inaudible).

GABLE: Well, I mean there's only one in the paper. Only one in the paper.

SALLE: (Inaudible).

GABLE, FRANK E.
Interview

90

GABLE: Oh, has it?

SALLE: Yeah.

GABLE: I didn't know that.

SALLE: You're kind of the one right now.

GABLE: Um.

SALLE: (Inaudible).

GABLE: I'm (inaudible).

SALLE: How do we make the connect there? Why does, uh, (inaudible).

GABLE: What has he done with anybody else? Is he (inaudible). Because, he gave me that information (inaudible). Is he the one that did it himself?

SALLE: (Inaudible) you're telling me he's covering his own ass (inaudible).

GABLE: Um hm.

SALLE: (Inaudible).

GABLE: I say yes. I say he's covering his ass, his brother's ass, and this guy Johnnie Crouse (inaudible). His brother got, you know, suspicioned for it, and I'm in county jail with him, he kind of makes a statement that he knows something about it, you know, and this guy, he throws this guy Crouse in there, you know, he could have threw any other suspect in there.

SALLE: Sure.

GABLE: Why'd he throw Crouse in there? (Inaudible). It's like I told these guys, I will wear a wire, I will do, I'll go talk to all kinds of people and do anything I can to solve this case and (inaudible).

SALLE: (Inaudible).

GABLE: I don't want that, you know, because I have friends out there (inaudible). It's as simple as that. I have to get out. There's a fellow out there right now. (Inaudible) I don't know who. I would love to know, because I'd tell you guys in a heartbeat. (Pause) You know, it's like, they told me like I could sit back and talk and everything (inaudible). Burgess' kid telling me about the jockey box, anybody that had knives, anybody that may have been

GABLE, FRANK E.
Interview

92

(inaudible).

GABLE: It's like I've had a few knives, you know, I collected nice cooking ones, just to give to my partner, on occasion, I gave him a real nice switchblade I bought up in Portland (inaudible). And I had another great big one, like a Rambo knife and I broke the handle off cutting firewood with it (inaudible) and that's it. Well, we're not making any progress. (Inaudible) (laughs). Hmm? I think we're in idle.

ACKOM: Idle?

GABLE: Yeah.

SALLE: (Inaudible).

GABLE: I almost got in the habit when I was (inaudible).

ACKOM: Really?

GABLE: Yeah, when I was in lockdown down there, they had me in lockdown during this investigation. Them things are addicting bad (laughs). I've been like my 5th day without one. I've never smoked and I started lighting them, because they're in lockdown, so I'd slip them under the door for them. (Inaudible) you'd have to light it. Then after a few days of lighting these, you know, after 15, 20, 30 days, it's like, (inaudible) ain't too bad, and then I was smoking like four or five a day and then, five days ago I said "Man, I'm not lighting no more for you guys," and, man, I just quit. I'm not smoking another one.

SALLE: (Inaudible).

GABLE: They're more addicting than pot and speed to me, man, it's like (inaudible).

ACKOM: They definitely can be. Where did you guys leave off?

GABLE: Well, he was like asking "Well, why would these five be saying that?: And I'm saying "Well," I made the statement as far as "Yeah, I'm being investigated on the Michael Francke murder" or "They're investigating me," but I made sure I told everybody I didn't do it. Maybe I didn't Maybe I just left it at that. "Oh, they're investigating me thinking I killed this guy." You know, I might have said that and they can take it for whatever they want to. And at that point, when I was working for the Keizer Police Department, I might have wanted them to take it at that. You know, just leave it like "This guy's solid, they're investigating him for a murder," you know. So I could get in and get the dope and make my score and give them my information and then they'd get busted. I might have just left it at that, I don't know. (Inaudible). I'm

GABLE, FRANK E.
Interview

93

basically done, I think. He's saying, right at this point, he thinks I may have did it. And he's saying I think I may have did it. And I'm saying I know I haven't and I'm trying to (inaudible). I know, you know, unless you guys have some other, you know, ideas on how we can do it, you know, I'm willing to do anything, I'm willing to wear a wire, I'm willing to go back and talk, you know, getting people that you may have said, you know, they didn't even know that I'm even talking.

ACKOM: We should let you run around out there with a wire on?

GABLE: Why not? Maybe somebody's going to say something.

ACKOM: What would you say to them?

GABLE: I wouldn't say nothin' (inaudible). "Hey, what's up? How you doin'?" "Man, they was over here investigating you on that killing, Dude. Where are they?" That's what they're going to do most likely. I'd say, well, what did you tell 'em? "I didn't tell them nothin'." Well, I just told them that you ain't never killed nothing. Maybe one of them will say, "Yeah, remember when you told me blah, blah?" Well, yeah, it was the middle of the night. So maybe one of them will say it and then we got it on wire, cause we

ACKOM: What if these people went back on one of these tapes we talked about. We talked about the Jodie girl.

GABLE: That Jodie girl. I just like, I've never talked to her, like I said. I've only seen her one time. She's running with Munchie, so right out of the trust her. She's like, she's a bag bitch. She'll get laid right now for dope.

ACKOM: For dope?

GABLE: Right.

ACKOM: So whoever she's getting dope from is who's she's...

GABLE: Screwin'.

ACKOM: Screwin'?

GABLE: Yeah.

ACKOM: And I know times are sometimes are sometimes foggy but--around the 17th, who was she screwin' at that time?

GABLE: I never seen until, I never met the woman until I met her in June.

ACKOM: Oh, you didn't meet her before that?

GABLE, FRANK E.
Interview

95

ACKOM: She could have seen you somewhere around town.

GABLE: I could have been driving down the street; she could have seen me, but I'm not going to see her.

ACKOM: She didn't know you then, Frank.

GABLE: How am I going to see her? She might know me by my car or by seeing me. People going on, that's Frank, everybody knows that car. I mean, there's people that I come up and they go, "Hey, there's the guy down there in jail." They go, "Remember me from ()?" Hey, no, I'm his nephew.

ACKOM: And she could have seen you anywhere?

GABLE: Sure. I could see you walking down the street.

ACKOM: So, if she's out doing a caper and you go by, she could see you.

GABLE: Sure. There's lots of people that, you know, if you go into a dope house. Like when I'm at Chris' and people come in and we're cooking dope and stuff down in the basement; there's people come in and out. I'm just like this. It's like, they see me. They may hear, "Oh, that's Frank. He drives that car." That car like I was anywhere in that car. I mean, there is so many people in Salem that know me, that know that car. They don't necessarily know me.

ACKOM: So, if she's doing dope with say Munchie or anybody else that knows you...

GABLE: Munchie could have been the one that done that.

ACKOM: She's doing dope with Munchie or anybody else that knows you, they could have told her about you, "Oh, there goes Frank."

GABLE: Like I say, I did not know her. I looked at the picture and it's like the time that I seen her over there at John's at 15th to 16th, the little house on the corner. One of the houses I-- dumped...Keizer PD at, that's the first time I remember seeing her. First time I remember seeing her. You know, she may have been jumped in my car with somebody and got dumped off someplace and I don't () look in the back seat. (). You know, I always introduce myself as, "Hey, my name is Dude," and I just don't let people know who I was, even though I high sign a lot out there and I got a lot of friends. A lot of people like me, ().

ACKOM: When we first started the interview, you talked about Michael Keerins and we asked you who do you think did it and you said Michael Keerins. Will you tell us why you think he did it.

GABLE, FRANK E.
Interview

96

GABLE: I didn't say, "I think Michael Keerins did it." I said, "I think Michael Keerins may have did it and know who did it." ()

ACKOM: I know, I know we don't have anything pointing to him.

GABLE: I gave you something pointing at him. See, that only shows me that you're really not listening to what I'm saying. You're just looking for certain things. It's like, I've told you why () should be there. It's like he told me, you know, left me with a shadow of doubt that he knew something, that he had something to do, or knew something about it.

ACKOM: Why should we believe you and not him? Why is he; I mean,

GABLE: For one? He's got the chance of maybe getting his brother off it (). Two, he hinted around he knew something about it, so that puts him involved, him getting afraid I'm going to roll on him when you investigated me. So he'd roll first, and ().

ACKOM: The same thing applies to Keerins that applies to you.

GABLE: Sure.

ACKOM: We still have to put him there, Frank. We can put him there.

GABLE: You can't put me there. If you have any type of evidence at all, this case would have been finished a long time ago. You know that as well as I do, Fred. I've studied law for 10 years now. I know about circumstantial evidence; I know about due process of law; everything that you need to get a good case going.

ACKOM: I told you a long time ago, Frank, we haven't gone to Grand Jury yet.

GABLE: Grand Jury's been going.

ACKOM: Not on you. That's the difference.

GABLE: Get it going. I would love to have it. I would really love that. Because then I know at the end of that, there's not going to be nothing but circumstantial evidence and maybe this guy saying, "Yeah, maybe we'll, Gable said he did it."

ACKOM: That's what you've convinced yourself.

GABLE: That's what I know. If you have a leak, I know more than what you think I know, Fred. A whole lot more. A whole lot more than you think I know.

GABLE, FRANK E.
Interview

97

ACKOM: This is the source close to the investigation.

GABLE: No, this is the source right inside your building. Right inside your building. I know. ()

ACKOM: Is this person one of us?

GABLE: I don't know who it is. That's all I'm going to say.

ACKOM: Is it?

GABLE: I won't say. You can get off that subject.

ACKOM: Well, you already said it's State Police.

GABLE: That could be anyone. That could be you. That could be anyone that you (). I know that they hair samples; I know that they have blood samples; I know that they come and took some from me. Mine will not match those. Matter of fact, I already know they don't. Matter of fact, I already know that all clothes that they did of mine, and removed my shoes, that they did not find any blood samples or anything on any of that stuff. Fishing knives; they had my bag. They found some fishing blood or leaves or some kind of blood. I know, you know.

ACKOM: Frank, you don't know everything.

GABLE: I know a whole lot more than ().

ACKOM: You might, but you don't know everything. There's tons of things that you don't know about.

GABLE: Hey, you know, there's also tons of things that you don't know about and I'm not going to give those to you. ()

ACKOM: What kinds of games you think we're playing?

GABLE: I think you're just putting me on the move. It's like, you know I didn't do it.

ACKOM: Frank, you called us down here. We didn't call up and ask to talk to you.

GABLE: I know you didn't.

ACKOM: (Interrupted by Frank.) And I want to know why?

GABLE: And I've told you what I have to tell you, you know, that my suspicions is one of the Keerins or that guy that he threw out because there was no reason for him to throw that on me. Not at all. Unless he just wants to get his case dropped; unless you give

GABLE, FRANK E.
Interview

98

him \$25,000; he's a publicity seeker; he's a chronic liar. Like I said, I've got people, five witnesses or more, you know that will stand up in trial and testify against any witness that you've got.

ACKOM: Anybody that knows

GABLE: That will diminish those witnesses. All those witnesses are from the Penitentiary; they're all criminals; they're all got records. I've got attorneys, I've got my supervisors. I may know where I've been.

ACKOM: Not all of them are criminals.

(Conversation I couldn't hear)

ACKOM: You don't know all of the witnesses.

GABLE: I don't care. I know that if comes to trial, I'm going to win. And I'm hoping it does. You know, that way I can just get on with my life without, "Oh, are they going to slam me this day because they got some phony liar over here." I would love that, man. I would love you guys to take this to trial as quick as you can. I really would. Cause I know, man. Like I said, God is not going to let me get roasted for something I did not do. Jesus Christ is in my life and I pray to him every night and he knows I didn't do this and I can feel good, man. It's feels good, man, right now knowing I'm an honest person and I didn't do this. It feels good. Because...(inaudible) I could tell the truth and still...(inaudible) man. Whether you believe me or not, it does not make no difference because it only makes a difference to Him, because he's going to be the one that tells me (inaudible). (Loud laughter!) Believe that, man. I got a spiritual change in my life. It's good.

GABLE: Feels good. Sounds like, you know, if I tell people that knew me in the past, they think, "What, a Christian? Gable, you're a liar." Some of these cops, they go, man (Conversation I couldn't hear)

ACKOM: I'm happy that you feel that way. I'm happy...

GABLE: It's like I'm basically doing that. I gave you what I could tell you and gave you a little bit of what's going on the first of, it's like we're going around the bush again, going around the bush again, going back to the names again and back around this way again. It's like what good is this doing? It's like, I'm being as honest as I can with you. I'm telling you again, "You have a killer out there and it is not me," Fred, and I do not know who did it. (Conversation I couldn't hear) If your a Christian (inaudible)

ACKOM: Do you think he would misdirect you?

GABLE, FRANK E.
Interview

99

GABLE: I don't think he would misdirect you but I think you would misdirect yourself. Your doing your job, your under pressure. See, you got a whole lot more to worry about than I do. You guys got to worry about finding out who the killer is. I don't care. You know, it's like, if I go to prison, I'm going to be a good Christian and I'm going to sit on death row and I'm going to preach the Bible; I'm going to convert people and just be the best I can.

ACKOM: Just like I told you before...

GABLE: I don't care.

ACKOM: Do you think we pulled your name out of a hat?

GABLE: It don't make no difference. If you think you guys called me to start with for killing him, that Mr. Gable, we're going to eliminate you from the investigation. What was the purpose behind that?

ACKOM: What are you talking about?

GABLE: (Dennis?) called me from Salem, told me, Okay, we're eliminating you from the investigation, you know. We've investigated you. You're eliminated from the investigation. You're polygraphed and that's it.

ACKOM: Dennis who the guy that I was with the last...

GABLE: The guy that was with you over in Coos Bay the night I got arrested. Black headed guy with a mustache.

ACKOM: Oh, uh, Darrell?

GABLE: Darrell. He called me and told me I'm eliminated from the investigation. That only tells me, up to that point, they had nothing until that polygraph.

ACKOM: When did he call you and tell you that?

GABLE: A month before I come and took the first polygraph; and they set it up about 3 weeks later. 3 weeks to a month later. Then I missed the first one. I just got started with a job so he told, well, could we make it later.

ACKOM: Three weeks to a month?

GABLE: Before we ever taken that polygraph; told me they were eliminating me from the investigation. All we want you to do is take a polygraph and () I said, "Great, no problem." I came

GABLE, FRANK E.
Interview

100

out and found out it didn't eliminate me from the investigation. All they want me to do is take a polygraph. I told them, "Yeah." They told me to come over here. I couldn't make it over here, so I started work like the next day. It's like it was in Coos Bay, so, it's like, I know they eliminated me from that investigation for a reason. He told me that when we were driving in from ().

ACKOM: They weren't eliminating at that time.

GABLE: (Interrupting) () they're not on to me now.

ACKOM: It wasn't until right before you took the polygraph that your name came up as far as being a possible suspect and why you were a possible suspect.

GABLE: () I'm content. It's like no matter what happens, I'm not going to break down. It's like, it's going to hurt, sure. It would hurt, bad. I just know it won't happen because I'm praying so hard every day that this guy will break down and, like Keerins, I pray every day that the God will be on him and just make him tell the truth, that's he's lying and that I never did tell that stuff to him, 'cause he knows that. And God know that. I know that the power of prayer will make that guy break down, whoever it is. I got several people praying and I just believe, man, that that will work 'cause it shows in the Bible over and over the power of prayer works. God will make this guy, whoever it is, that killed Michael Francke, God's going to make him come forth and confess. or he's going to get caught by slipping up. I know that and that killer is not me and I know that. I'm so happy, so content that man, that it ain't funny. At first I was just too scared and these guys freaked me because I thought I was getting railroaded, but I know that after I laid here and think over and over and over, I don't care, 'cause I know I didn't do it and I've got friends that know I didn't do it. That's all it means to me, man. Is God and my friends and I know that I didn't do this and that's all that matters because you're the ones that have to worry about who the killer is. If I get roasted on this, no matter what all those people say, even if I went around just bragging and trying to make myself think I was somebody, right, (). I've dug deep. If I went around, told somebody that, when I really didn't do the crime, they was thinking I was Rambo or whatever, right. If I get roasted, you have a killer running around. God may strike my little girl if I'm lying. (Conversation I couldn't hear) I'm tryin' to get you guys to focus on something, maybe just that a, just a little bit, like, maybe he's telling the truth and start looking.

ACKOM: Just give us something solid.

GABLE: What can I give you, Fred? I don't know. I was not on the

GABLE, FRANK E.
Interview

101

hospital grounds!!

ACKOM: Yeah, but Frank....

GABLE: (Interrupting) I do not know who killed the guy, man.

ACKOM: You've got all these contacts.

GABLE: ()

ACKOM: Get them to work for you. Give us something solid to work on. We'll go out there and work on it.

GABLE: Send me to the Penitentiary and I'll get the guy.

ACKOM: You haven't got anything, have you?

GABLE: What am I supposed to have?

ACKOM: Well get it and we'll go looking for it.

GABLE: I'm not here to...

ACKOM: (Interrupting) You could find ...

GABLE: (Interrupting) I'm here to keep myself from getting found guilty and I'm not here to create a story about this guy over here. I got some information to give. You guy's have a little. You know it as well as I do and I'm getting, I got a little shit, well maybe that fits. There's a guy in the Penitentiary that said he knows who did it.

ACKOM: Oh, yeah.

(Conversation I couldn't hear)

GABLE: He's scared to death. It's like they say () did. That makes sense because of the body shop. People say that he was really tripped out prior to the (Conversation I couldn't hear) Then they say, well, car burglary. That doesn't fit. I was driving a nice car, using all the best dope in the world at that time. And I'll work with you guys, if you want me to, whatever I can do at this time. (Conversation I couldn't hear) Something in my heart told me something, something in my heart told me. (Conversation I couldn't hear) I don't know you need to do something...(inaudible) like I said I do not know who did. You know I have my suspicions. I've been curious why Keerins would say that. I'm curious as to why he went so far as to say that other guy didn't do it. That doesn't ring well. There's somethin' doesn't ring right there. I thought of everybody I've seen around that area. Everybody who's all tweaked out or blood spot on their

GABLE, FRANK E.
Interview

102

shoes. I could remember. They was just sweatin' too much, you know, and maybe running away from that place...cause I guess the person ran. It's like the only...I can think of is Burgess makin' that statement...Those kids were kind of tweeked out that night. Made that statement like if they were just runnin' from a jockey box they were too scared.

ACKOM: You heard that someone was runnin' from the...

GABLE: Maybe a person was seen runnin' from the place.

ACKOM: What if I told you that we had a person who said that you were seen running by the Dome Building?

GABLE: By the Dome Building? I would say, well, what would I be doing running by the Dome Building when I have a \$12,000 sports car. That's what I would say. I would say they are lying because I drive a \$12,000 sports car and I don't run nowhere. Like, I drive right up in people's lawns and get out.

ACKOM: What if they knew who you were but didn't know you personally but they knew you enough to ()? What would be their motive for lying?

GABLE: I don't know. I just know that I was not running back...

ACKOM: (Interrupting) Doesn't really know you.

GABLE: I'm through. Let's go.

ACKOM: Okay, we're going to end the interview with Frank Gable. The time is 9:42 p.m.

GABLE = Frank Edward Gable (Previously Identified)

ACKOM = Fredrick E. Ackom, Detective - Oregon State Police

BAIN = Paul Bain, Detective - Oregon State Police

SALLE = John P. Salle, Sergeant - Oregon State Police

CASE NUMBER SP890067		SPO Evidence #89-016		E. R.-930 INFORM ON REPORT DEPARTMENT OF STATE POLICE SALEM, OREGON 97310		DISTRIBUTION			
AGENCY OREGON STATE POLICE - SALEM						<input checked="" type="checkbox"/> Gen. Hdq.	<input type="checkbox"/> Arson	Document	
1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution—Complainant <input type="checkbox"/> No Prosecution—Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER		<input checked="" type="checkbox"/> Dist. Hdq.	<input type="checkbox"/> Narcotic	<input type="checkbox"/> Ident.	
						<input type="checkbox"/> Crime Lab			
						<input checked="" type="checkbox"/> Other	Marion County D.A.		
4. Original Report Date 01-18-89, Wednesday		5. Time 12:48AM	6. Written By Kenneth P. Pecyna, Detective		7. This Report — Date 10/13/89	8. Time 10:00 p.m.		9. County Marion	
10. Victim or Complainant FRANCKE, JAMES MICHAEL			11. Residence Address 21058 Hazelnut Ridge Road Scotts Mills, OR 97375			12. Res. Phone --	13. Sex M	14. Race W	
16. Subject of This Report FOLLOW-UP INVESTIGATION						15. D.O.B. 10-02-46			
						17. Total Value of Recovered Prop. (Itemize Below)			
18. Details: (Use Additional Plain Sheets as Necessary)									

REFER TO: All reports bearing General Headquarters Case #SP8900672.

MENTIONED FOR
DATA ENTRY: WARILA, CHRISTOPHER JAMES. DOB: 11/28/60
1255 Cross Street SE
Salem, Oregon

MENTIONED OTHERS: PECYNA, KENNETH
Detective Oregon State Police

MCCAFFERTY, JOHN
Sergeant Oregon State Police

NARRATIVE: On January 18, 1989, at 12:48 a.m., security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections' Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

ACTION TAKEN: Chris Warila was contacted by the writer and Kenneth Pecyna at the Salem Patrol Office for a post-polygraph test interview. Chris Warila gave a signed statement contained in the writer's notebook regarding the Francke homicide. (Refer to attached statement.) Later in the interview, Sergeant John McCafferty contacted the writer and Chris Warila during the interview.

CASE STATUS: Continued.

Reporting Officer(s)
Loren T. Glover, Detective

Off. I.D. Number
102-21

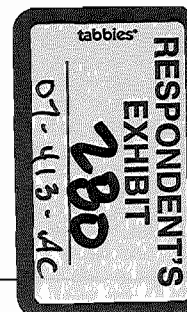
Other Agencies Notified

Date

Time

Method

APB Numbers and Dates



0006016

EX 182

Approved By

Date

WARILA, C CHRISTOPHER JAMES DOB: 11/28/60
1255 Cross Street
Salem, Oregon
(Previously Identified)
Interview

On 10-13-89 at 4:55 p.m., Detective Kenneth Pecyna contacted Christopher James Warila at the Salem State Police Patrol Office. Christopher James Warila gave Detective Pecyna the below statement which is signed and contained in Detective Pecyna's notebook regarding follow-up investigation on the James Michael Francke homicide. Present during this interview was Detective Loren Glover.

"I remember one time Frank put a trash bag, which was green, in the back of the Celica. The bag had trash already in it. He was wearing a baggy levi coat, grayish color, and seemed hush-hush. Nick and Gayla Freeman were present. This was around 10:00 to 11:00 o'clock p.m. I wanted to say that he was there all day and left, then came back. He seemed like he was gone for at least an hour. I think he went to see Janyne. It was a faded denim brownish grey coat. Real baggy. I remember seeing breath and that it was wet out. So it was cold. I don't remember if he said anything to Janyne. He stayed and slept on the couch. We probably did crank. Ray Keller was there that night. Frank sometimes would talk to him, too. He and Nick were in the kitchen talking. I knew Frank was out there. I went out and saw that trash bag was in the back of the car. Frank popped up the back hatch-back and I removed the bag. I could see the bag through the louvers. I don't know how long he had been back. I think maybe he came back after dinnertime sometime. Dinnertime was about 6:00 or 7:00 p.m. Frank came in the house first. Frank left earlier and when he returned around 8:00 to 9:00 o'clock, I remember, and then he returned around 8:00 to 9:00 o'clock p.m. I remember one time seeing bloody rags. This might have been from a dog. I remember Dennis Gause dropping a huge knife on his dog and cutting it. Gayla was there. Gayla is staying with Steve Russell. Steve lives down a street near Oak, I think, in some apartments. It's the second door on the left. It's down the street on 12th by the old building by LaCasa Real. Frank said he had stabbed someone. I think I remember standing on one side of the car and Frank was on the other. I want to say he stabbed him twice, once in the abdomen or chest. Or chest and arm. I think it was two different places. He said something about struggling with the guy. I remember getting in his driver's seat. It was in the afternoon. I

0006014

E. R.-932

WARILA, C OPIER JAMES DOB: 11/28/60
1255 Cross Street
Salem, Oregon
(Previously Identified)
Interview
Page 2

think we might have going over to Robert's house. I don't know why we would have gone there. Robert lived off Lancaster. You go on Pennsylvania to 49th, then turn left again onto Tanglewood. Frank told me this as we were getting in the car. Frank seemed worried. I might have asked him what was bothering him. I remember, for sure, he said there was a struggle and he stabbed him twice. I think he said this occurred in a parking lot according to what he said. I remember it was a grey overcast day, 1:00 or 2:00 in the afternoon when this happened, that Frank told me. Frank might have said something to Nick. He really looked up to Nick. When Frank was telling me it was like the next day or two after. I remember a smile. It was a quick, quirky grin. It was kind of a grin where he was worried and trying to deal with but sort of bragging. I was seeing several different emotions. Robert Cornet is who I was talking about. Instead of going to Robert's we might have been going to Shelly's (Smelly Shelly). I remember Frank talking about the stab in the chest and one time stabbing when he was falling. There was no snow on the ground during the time Frank had told me but it was cold. I remember something about Frank saying he was doing something and guy came up on him. My impression of the conversation was that Frank was getting in the Dude's car and he was confronted. I remember a parking lot. I don't remember him saying where. I remember I told him to shut up and not tell another soul. Nick or Robert are the only ones I might have said something to."

/s/ Chris Warila

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E. R.-933

WARILA, C TOPHER JAMES DOB: 11/28/60
1255 Cross Street SE
Salem, Oregon

On October 13, 1989, Detective Loren T. Glover and Detective Kenneth Pecyna and subsequently Sergeant John McCafferty interviewed Christopher Warila at the Salem Patrol Office.

"The incident in the car with Frank Gable where he told me about stabbing the guy in the parking lot occurred after Christmas and before the big snow storm. I might have mentioned to Robert Cornet about what Frank had told me about the stabbing. I never took Frank Gable over to Cornet's house. I remember that I did not take Gable the day he told me about the stabbing to Cornet's house. I can't remember where we were going. The conversation started when we got in Frank's car at my house. I was driving. Frank seemed different and evasive. I asked him what was going wrong or what was going on. He said he got into a struggle and stabbed a guy in a parking lot. He said he stabbed the guy in the abdomen or chest and Frank, when falling, he stabbed the guy in the arm or leg. Frank said he was either in the guy's car or was breaking in the guy's car. I have never read the paper or saw anything on the news. I did not know anything about the Francke death until Detective Glover told me when he first talked to me. I think Frank Gable was capable because he was "tweaked" on dope all the time. Regarding the garbage bag, Frank told me at 11:00 p.m. that he was going to take the garbage to the dump in his car. The top of the bag was tied at the top in back of Frank's car. Nick Desanto was with me during that incident with the garbage bag. The garbage bag incident and incident with Frank telling me about the stabbing were close together. Frank seemed more paranoid during this time. He was always worried about people following him and after him. After a week or two, Frank mellowed out and was not as bad. Frank said he was doing something and the guy came on him and startled him. I stressed the fact for Frank not to tell anyone. Frank said he would not tell anyone. Frank said something that made me feel that the stabbing occurred one or two days before he told me. Frank was friends with John Bender. Bender was selling dope from his house on Hyacinth. The reason I remembered the stabbing conversation is because the name Francke was screwing me up. Gable did not say the name Francke. Frank was "slamming" drugs heavy during this time of our conversation. Jodie was around not too long after

E. R.-934

WARILA, (PIPHER JAMES DOB: 11/28/60
1255 Cross Street SE
Salem, Oregon

this time period. Jodie is, I think, in Amity with Rick. There is a lot of dope out there. The New Year's party at Frank's place on Hawthorne was before the garbage incident and stabbing conversation."

/s/ Chris Warila

002152

0006018



DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE DIVISION

Dist II

002331

REPORT OF INTERVIEW

CASE/FILE NO.: John Lee CROUSE; DOB: 6/14/57
Inmate, Oregon State Penitentiary

PERSON INTERVIEWED:

OTHERS PRESENT: Cpt. FORBES, Oregon Corrections Division
Det. Kenneth PECYNA, Oregon State Police

DATE/TIME/PLACE OF INTERVIEW: April 5, 1989; 10:22 a.m.
Oregon State Police office, Salem

INVESTIGATOR: Randy C. MARTINAK

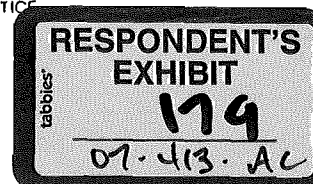
DATE DICTATED: April 16, 1989

At approximately 9:00 a.m. on April 5, 1989, John Lee CROUSE, by prearrangement with him and with his consent was brought to the Oregon State Police office in Salem. He was placed in an interview room and upon being placed there, he told us that he had not had time to do the writing that he told us he would do. He advised that after confessing to his part in the stabbing of Michael FRANCKE, he had felt much better, and had gone to sleep instead of writing like he told us he would. John CROUSE stated that it was the first decent night's sleep he had since the stabbing of Michael FRANCKE. CROUSE requested pencil, paper. He told us that he would begin writing what had happened on January 17, 1989. Cpt. FORBES was present in the interview room with him, while Detective PECYNA took care of other matters.

At 10:28 a.m., CROUSE was advised of his constitutional rights from a Miranda card by Detective PECYNA. CROUSE states that he understood his rights, and consented to speak with investigators. I asked CROUSE about the vehicles which he told me that he had stolen after his release from the Oregon State Penitentiary.

PAGE 1 OF ____

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0001

CJ-OC-89-02
John CROUSE
April 5, 1989
Page Two

002332

CROUSE advised me that the first vehicle he had stolen was a Volkswagon Jetta, which he took from a parking lot on High Street, not far from the bus depot. CROUSE stated that he did not recall the exact date of the theft, he recalls that he had the vehicle at about Christmas time, and that the car was towed away from a parking lot near the Monterey Apartments. CROUSE advised that Whitney FISH was with him, and accompanied him to Portland in that car at Christmas time.

I then checked with the Salem Police Department and found that their case #88-60016, involved the theft of a Volkswagon Jetta from 660 High Street, N.E. The stolen report indicates that the vehicle was reported stolen during the afternoon of December 21, 1988, and was recovered on December 29, 1988 at a parking lot at 100 Church Street.

CROUSE stated that the second vehicle that he had taken was a Chevrolet pickup, a 1986 Silverado model, which he took from the used car lot of DeLon Honda. CROUSE advised that the vehicle was taken around the first of January. On the day that he took it, he transported a recent releasee from the Women's Release Unit to Portland. He states that when he was returning from Portland, he ran out of gas with the pickup, north of Salem near a freeway exit, and that he abandoned the vehicle there.

I contacted Salem Police Department, and they advised that they had a stolen auto report #89-170. The report indicates that a 1986 Chevrolet Silverado pickup, 4x4, was stolen from the DeLon Honda lot at 750 Commercial Street, between December 30, 1988 and January 2, 1989. The report advised that the Oregon State Police recovered the vehicle on January 2, 1989 on I-5 near the Donald-Aurora exit. CROUSE again informed me that the keys to both of the vehicles should have been located in a box at the residence of Penny FOX.

I told CROUSE that the Lancaster County Sheriff's Office had made contact with his brother, Larry D. CROUSE in Malcolm, Nebraska, and of the statement made by his brother, Larry. I told CROUSE that arrangements had been made for him to talk with his brother by telephone. CROUSE said he wanted to talk to his brother, and tell his brother to tell the police the complete truth in regards to his statement to his brother about the killing of Michael FRANCKE. (See transcript of tape recorded call to Larry D. CROUSE by John Lee CROUSE.) At the completion of the call to his brother, John CROUSE then called his girlfriend Cyndi HATHAWAY, and after that telephone conversation he was visibly upset. CROUSE then stated that he

002333

CJ-OC-89-02
John CROUSE
April 5, 1989
Page Three

wanted to retract his complete statement, and claimed that he was totally innocent of the death of Michael FRANCKE.

CROUSE was allowed to sit in the interview room and gather his composure. After about five minutes, CROUSE told us that it was the phone call to his girlfriend, and the realization that she might leave him, if she thought he had actually killed Michael FRANCKE, that led him to retract his statement. CROUSE again told us that he was responsible for the death of Michael FRANCKE, and told us that he had not told us the total truth in regards to the death. CROUSE was then transported back to the Oregon State Penitentiary. CROUSE told us that he was still willing to speak with us about the crime.

During the early evening of April 5, 1989, Detective Sgt. Karl NELSON and Detective PECYNA transported John Lee CROUSE back to the area of the Dome Building. I rode to that area with Cpt. FORBES. Detective PECYNA and I accompanied CROUSE around the scene where Michael FRANCKE had been stabbed. CROUSE did not want to walk around in the area where the stabbing occurred. He kept edging away from that area, walking in the direction that he had alleged to have fled from the scene on the night of the crime.

*at match to
retractor statements*
CROUSE stated that now that he had returned to the scene, he wanted to correct some of the information that he had given us. CROUSE walked to the area of the driveway, which exits the parking circles to the west. He then pointed out to Detective PECYNA and I the route that he had run away from the scene after the stabbing of Michael FRANCKE. CROUSE indicated that he had ran out the driveway, across the driveway to a point near a large green generator. CROUSE states that he then cut up through some shrubbery and on to a driveway, and that he had stopped and looked back from a location along that driveway. CROUSE stated, "I wasn't looking for FRANCKE, I was looking to see if anyone was chasing me." He indicated that he then ran on westward on the driveway.

CROUSE also pointed out the approximate location of the vehicle which he claimed was FRANCKE's vehicle. CROUSE became somewhat withdrawn, and became angry when questioned, in particular about where Michael FRANCKE was last seen by him. At one point, CROUSE said, "That's it, I'm going back, and walked toward the car." As CROUSE turned to walk away, I reached out and grabbed him at the top of the shoulder. I informed him that he would be returned in the same vehicle he came in. CROUSE told me to get my hands off him and told me that because he had leg irons on, I might be able to beat him,

CJ-OC-89-02
John CROUSE
April 5, 1989
Page Four

002334

although he was still going to attempt to kick my ass. CROUSE then told us that he wished to leave the scene and go back to the office. CROUSE said, "Let's go, let's get back to the office, I want to get this over with, I want to tell you the whole truth." CROUSE was transported back to the Oregon State Police office by Sgt. NELSON and Det. PECYNA. When we arrived back at the State Police interview room, Det. PECYNA went into the room along with CROUSE for a few minutes and I could hear CROUSE's raised voice stating that he was mad at me. CROUSE calmed down and I re-entered the room. CROUSE apologized for getting angry and we shook hands. CROUSE said that he didn't like being grabbed or restrained, and commented that I had grabbed him like FRANCKE did that night. CROUSE said he was ready to tell the whole and complete truth. He gave a tape statement at 8:50 p.m.

At the completion of the tape statement, CROUSE requested permission to call his brother again and it was granted. This telephone call was not recorded; however, I sat in the room and the call began at 9:34 p.m. The following statements were statements by CROUSE over the telephone:

"I told them all about it, now I guess it goes to the D.A."

"It was just an accident that went bad."

"Was you in bed?"

"How did Mom take it (pause) hard?"

"I'll try to write to you, to them tomorrow."

"Now it goes to court."

"They'll probably send me out of state."

"Sorry I had to call and give you the bad news."

"It was a freak accident, is all."

"I wasn't out to kill him, I didn't know who it was at first."

"I can get the death penalty."

"I got to get an attorney now."

"I went in a furry with him."

002335

CJ-OC-89-02
John CROUSE
April 5, 1989
Page Five

"I got the worst of it out, I had to, because I was having a hard time living with it."

"Can I talk to Loretta for a minute?"

"I'm getting ready to call her now, here and tell you face-to-face."

"I wish I could talk to the family face-to-face."

"I remember what you told me, I hope you'll stand by me. (Long pause) if you don't, I'll understand."

"I was on the run thirty some days, hiding out."

"You think I should call Mom? (Long pause) I'd have to do it tonight, or I'll back out."

"Get some funds together."

"Send me photos."

"Thanks for standing by me. (Long pause) It's hard for any family to understand."

"Just one (long pause) yea (long pause) no."

"They treated me good."

"I couldn't keep living with the guilt."

"I'll have to call Cyndi."

"I'll call Mom."

At the completion of that call, CROUSE requested that he be allowed to call his mother and advise her. This call was made at 9:44 p.m., and I left the room as that call started. I returned to the room at 9:51 p.m., and heard John CROUSE say the following:

"It was a freak accident (long pause), now I have to face it and go on."

"I'll give you Cyndi's phone number."

"I asked Larry to send some photos."

CJ-OC-89-02
John CROUSE
April 5, 1989
Page Six

002338

"I wanted to call and tell you myself."

"I love you too, take care of yourself."

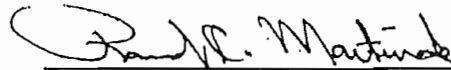
"I'll let you know."

"You there by yourself?"

"I don't think none of you do (long pause) when it actually comes out."

"I'm sorry."

At the end of that conversation, I questioned CROUSE about his statement that he had been on the run for about thirty days, and asked him where he was staying. CROUSE stated that he and Cyndi had stayed most of that time at the All Star Inn in Salem. CROUSE told me that Cyndi had left her husband, and was staying there prior to moving in with her grandmother on Brown Road.



Randy C. Martinak
Investigator

11f/4865C

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File: CROUSE . 5,644 .a.. 9-03-98 7:46:36 am Page 1

SUMMARY OF INFORMATION ON JOHN CROUSE

Johnny Lee Crouse
DOB: 06-14-57 POB: Nebraska
SSN: 508-74-8733
ODL: 3517451
M/W/6'0"/160lbs
Res: 2255 Brown Rd. NE, Salem
tel: 362-7933
other Res: 3360 Camellia Dr., South, Salem
Parole Officer: Stan Groom

Statements by Crouse regarding Michael Francke's murder:

02-15-89 Discovery Pages 0859-0899
Observed about five men in a commotion speaking Spanish. He chased one on foot about 3 1/2 miles.

04-04-89 ✓ Discovery Pages 0906-0930
Crouse had admitted killing Francke. Offered \$300,000 and was paid \$1,500 by unknown well-dressed Mexican. Crouse contacted Francke as Francke was leaning into his car. He stabbed Francke with his left hand with an upward motion then started to run. Changed directions and passed Francke again. Pushed Francke against the car then ran away. Said he admitted the murder to his brother.

04-05-89 ✓ Discovery Pages 0945-0950 Investigator's report.
Crouse stabbed Francke about five times, at least once in the heart in a downward motion, and maybe in the right arm. Crouse was in the car and Francke approached him. Crouse broke into the car using a wire. He didn't know it was Francke until the next morning. Crouse confessed murder to his mother. Crouse confessed murder to Cynthia Hathaway.

04-05-89 ✓ Discovery Pages 0951-0960
Crouse confessed murder to his brother. Crouse broke into car, Francke approached, they fought, and Crouse stabbed him in the heart, arm, and stomach.

✓
Undated handwritten notes. Discovery Pages 0962-0963
Crouse was looking in a car and a man approached, put a hand on Crouse, and said come with me. They started walking and Crouse said he was not going to jail. They fought and Crouse pulled a knife. Crouse tried to run and Francke jumped him. They fought more and Crouse stabbed him.

✓
Undated handwritten notes. Discovery Page 0964
Crouse threatened Francke and told him to get everything they

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File: CROUSE . 5,644 .a.. 9-03-98 7:46:36 am Page 2

have on him (Crouse). Francke hit him and Crouse stabbed him 5 or 6 times.

04-05-89 ✓ Discovery Pages 0965-0980
Crouse broke into Francke's car using a wire. Francke grabbed him and said come with me. They fought and Crouse stabbed him numerous times in the arms, hands, stomach, and chest. Didn't know it was Francke till the next morning.

04-06-89 Discovery Pages 0992-0998
Crouse further described his clothing and location of blood.

04-06-89 Discovery Pages 0999-1016
Crouse told Cindy he passed a lie detector test.

04-09-89 Discovery Pages 1019-1025
Crouse confessed to killing Francke and said the last of their confrontation was about eight feet behind Francke's car.

04-13-89 ✓ Discovery Pages 1028-1029
Crouse said he got a sore jaw where Francke struck him. Crouse "could not live with getting away with the Francke murder." Explained why he had previously lied to Detective Glover and denied killing Francke.

04-13-90 ✓ Discovery Pages 1030-1040
Crouse said he lied to Detective Glover two days previous and that he really did kill Francke.

06-15-89 ✓ Discovery Pages 1045-1138
Crouse had been asked by Moss and Arminicus to kill an inmate. Francke was going to fire Moss and Arminicus and they found out. That's when Francke was killed. They offered Crouse \$10,000 to kill Francke. Denied any involvement in Francke's death. Said he was in the area and knows who killed Francke.

11-30-89 ✓ Discovery Pages 1153-1194
Crouse said he had no involvement in the murder.

o
002301 Inv. Martinak
Int. Crouse, John
To scene
002305 Inv. Martinak

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File: CROUSE . 5,644 .a.. 9-03-98 7:46:36 am

Page 3

Crouse, John
Phone call by Crouse to his brother
002308 ✓ Inv. Martinak
Crouse, John
Phone call to Crouses mother
002312 ✓ Inv. Martinak, Randy 4-6-89
McLaughlin, Kathryn
Int. Crouse, John Lee 4-4-89
002322 ✓ Inv. Martinak, Randy 4-16-89
Int. Crouse, John Lee 4-13-89
002337 ✓ Inv. Martinak, Randy 4-16-89
Int. Crouse, John Lee
002341 Det. Glover, Loren 4-18-89
Int. Crouse, John Lee 4-11-89
Mentioned, Burgess, CJ "Buck"
002342 Inv. Martinak, Randy 4-5-89
Det. Pecyna
Int. Crouse, Larry D. 4-4-89
002346 Inv. Hooper
Int. Crouse, Larry D. 4-5-89
Taped statement
002356 Inv. Martinak, Randy 4-17-89
Int. Larry Crouse 4-14-89
Interviewed in Lincoln, Nebraska

J-458 (Rev. 6-24-87)

POLYGRAPH REPORT

DATE OF REPORT	DATE OF EXAMINATION 4/19/89	BUREAU FILE NUMBER	FIELD FILE NUMBER PD-252-B-4
FIELD OFFICE OR AGENCY REQUESTING EXAMINATION FBIHQ			
AUTHORIZING OFFICIAL ASSISTANT DIRECTOR, LABORATORY DIVISION, FEDERAL BUREAU OF INVESTIGATION			DATE AUTHORIZED 4/14/89
EXAMINEE NAME (LAST, FIRST, MIDDLE) CROUSE, JOHNNY LEE			

90503509

CASE TITLE UNSUB;
JAMES MICHAEL FRANCKE - VICTIM (DECEASED)
OREGON STATE POLICE, SALEM, OREGON;
1/17/89; NCRV - HOMICIDE
OO: PORTLAND

REFERENCES

CASE SYNOPSIS/EXAMINER CONCLUSION

In this case, MR. MICHAEL FRANCKE, Director of Prisons for the State of Oregon, was found stabbed to death on January 19, 1989, near the parking lot of his office. No physical evidence was found, and no witness came forth who could identify the assailant. About one month later, however, JOHNNY CROUSE came forward and said that he saw five (5) "Mexican boys" attack MR. FRANCKE in the parking lot. Intensive investigation by the police and FEDERAL BUREAU OF INVESTIGATION (FBI) failed to substantiate in any way the statement of MR. CROUSE. In the meantime, MR. CROUSE, who was a convicted felon on parole, was caught committing another crime. The State of Oregon violated his parole and returned him to prison. After additional interviews, MR. CROUSE admitted that he stabbed MICHAEL FRANCKE.

In his statement, MR. CROUSE advised that he had just broken into an automobile when the owner, who turned out to be the victim, MICHAEL FRANCKE, tried to grab him and hold him for the police. CROUSE said he fought with FRANCKE, and finally when he could not get away, he pulled out a knife and stabbed FRANCKE.

MR. CROUSE said that all the other stories he had told the police were lies, except for the last story when he admitted to stabbing MICHAEL FRANCKE. He volunteered to take a polygraph test from the FBI, during which he was asked the following relevant questions:

EXAMINER NAME: JOSEPH E. GERSKY

58 (Rev. 6-24-87)

POLYGRAPH REPORT

DATE OF REPORT	DATE OF EXAMINATION 4/19/89	BUREAU FILE NUMBER	FIELD FILE NUMBER PD-252-B-4
FIELD OFFICE OR AGENCY REQUESTING EXAMINATION FBIHQ			
AUTHORIZING OFFICIAL ASSISTANT DIRECTOR, LABORATORY DIVISION, FEDERAL BUREAU OF INVESTIGATION			DATE AUTHORIZED 4/14/89
EXAMINEE NAME (LAST, FIRST, MIDDLE) CROUSE, JOHNNY LEE			

90503509
WV

CASE TITLE UNSUB;
JAMES MICHAEL FRANCKE - VICTIM (DECEASED)
OREGON STATE POLICE, SALEM, OREGON;
1/17/89; NCRV - HOMICIDE
OO: PORTLAND

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MR. CROUSE said that all the other stories he had told the police were lies, except for the last story when he admitted to stabbing MICHAEL FRANCKE. He volunteered to take a polygraph test from the FBI, during which he was asked the following relevant questions:

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EXAMINER NAME: JOSEPH E. GERSKY

CASE SYNOPSIS/EXAMINER CONCLUSION CONTINUED:

- A) Did you lie when you told the police that you stabbed MR. FRANCKE? no
- B) Did you make up that story about you using a knife to defend yourself against MR. FRANCKE? no

It is the examiner's opinion that MR. CROUSE was not deceptive to these questions. Because of the very serious nature of the incident, MR. CROUSE was given a second exam utilizing another polygraph technique wherein he was asked the following relevant questions:

- C) Did you lie to the police when you told them that you stabbed MR. FRANCKE? no
- D) Did you make up that story about you attacking MR. FRANCKE? no

The examiner believes that MR. CROUSE was not deceptive to these questions, and he was being truthful when describing his role in his final statement to the police.

000294

Incident Number 89-2454(F)

SALEM POLICE DEPARTMENT

Page 1 of 71

Connect Number 89-00672 (OSP)

Event Type AOA/MURDER

Date/Time 02/15/89 0921 hrs

Statement of Johnny Lee Crouse

D.O.B. 06/14/57

Home Address 3360 Camellia Drive, S., Salem, Oregon

Location Statement Taken Oregon State Police, Salem, Marion County, Oregon

I, _____, make the following statement to _____
who has advised me of my rights which are as follows: I have the right to remain absolutely
silent. Anything I do say can and will be used against me in a court of law. I have a right
to consult an attorney before making any statement. If I am without funds, I have a right to
a court attorney at public expense. I have a right to have my attorney present when and if I
do make any statement. I have the right to interrupt the conversation at any time. Anything
I do say must be freely and voluntarily said.

I understand these rights: _____ I do have questions about my rights: _____

Understanding these rights, I am now freely and voluntarily choosing to make the following
statement _____ (initial).

TM: This is a tape-recorded statement taking place at the Oregon
State Police office in Salem. The time now is 0921 a.m. The
date is 02/15/89. Present in the interview room is Detective
Ed Mouery of the State Police, Tom Mason, and Johnny Lee
Crouse, C-r-o-u-s-e. Is that right, John?

JC: Hm-hmm.

TM: Okay. And your address is 3360 Camellia Drive, Southeast?
Or, correction -- that's south, isn't it?

JC: Yes.

TM: Okay. And your date of birth is 06/14/57.

JC: Yes.

TM: Okay. You re -- realize there's a tape-recorder on in this
room?

JC: Yes.

TM: Okay. And the purpose of our conversation today basically is
as a result of your having conversation with your, ah, parole
officer last night, is that correct?

JC: Yes.

TM: Okay. And, ah, as I understand, you kind of basically
requested to pass this information on, is that right?

READ THE FOREGOING STATEMENT AND DECLARE THAT IT IS TRUE AND ACCURATE TO THE BEST OF
MY KNOWLEDGE AND BELIEF.

Witnessed _____

Signed _____

Witnessed _____

Date _____

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: Yes.

TM: Okay. So you're here freely and voluntarily and you're not under arrest and all that, you realize that, right?

JC: Yes.

TM: Okay. Good. Now, ah, we -- we've been talking, ah, just a little bit. Maybe I should cover this as background. You're from, ah, originally from Nebraska, is that right?

JC: Yes.

TM: Okay. And how long have you been here in, ah, Oregon?

JC: For about nine years.

TM: Nine years? Okay. Ah, and a portion of that nine years, ah, you were in, ah, the Corrections Division, is that --

JC: Yes.

TM: Okay. About, ah -- where were you sentenced from?

JC: Bend, Oregon.

TM: And what -- what kind of, ah, charge did you --

JC: First degree and second degree robbery.

TM: Okay. And how much time did you get?

JC: I got thirty years.

TM: And served?

JC: Eight.

TM: Okay. Was any of that, ah, as a parole violation or anything, or did you just do eight straight?

JC: I did eight straight.

TM: Oh, okay. Um, were you both in, ah, OSP and OCI or just OSP, as background? You're from, ah, originally from Nebraska, is that right?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 2

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Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: Yes.

TM: Okay. And how long have you been here in, ah, Oregon?

JC: For about nine years.

TM: Nine years? Okay. Ah, and a portion of that nine years, ah, you were in, ah, the Corrections Division, is that --

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TM: And served?

JC: Eight.

TM: Okay. Was any of that, ah, as a parole violation or anything, or did you just do eight straight?

JC: I did eight straight.

TM: Oh, okay. Um, were you both in, ah, OSP and OCI or just OS⁰ from five until eight in the morning.

TM: Okay. All right. Five p.m.

JC: Till eight a.m. Plus I worked during the day.

TM: Oh, great shift. (Laughter) That doesn't sound like night manager to me. It sounds like twenty-four-hour-a-day manager. (Laughter)

JC: It's close.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 3

0000861

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Wh -- and, ah, you said you lived there until the end of January.

JC: January.

TM: Yeah.

JC: And I moved to -- moved out -- I got a phone call from Penny Fox for an interview, saying that she wanted to talk to me about me moving in out there. So I went on my interview and I decided that night I'd move in, so I moved in the next day with her and that's where I've been living at since then.

TM: Okay. And that was as -- as a result of a -- ah, from what you were mentioning, a newspaper article or something?

JC: Yeah. In the Statesman-Journal Sunday paper.

TM: Yeah. And, ah, basically that the living conditions at the Monterey weren't good, is that what that article was about?

JC: Yeah. It was about ex-cons getting out and almost homeless.

TM: And moving in there and --

JC: Yeah. Getting back into the old society as soon as they walk back out.

TM: Okay. So, um, you moved in with, ah, Penny and -- and, ah, she, ah, is she older or what's --

JC: Yeah, she's forty-five.

TM: Oh, okay.

JC: She's a pharmacist at the, ah, Salem Hospital.

TM: Oh. Which one?

JC: One down there.

TM: Okay. The main one in Memorial?

JC: Yeah.

TM: Okay. Okay. And, ah, you didn't know her until that article, ah, came out?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 4

0000862

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: No.

TM: Okay. What, ah -- are -- are you working now?

JC: No, I'm unemployed.

TM: Okay. Okay. So basically since you left, ah, that great job you had at the Monterey, why, you've been -- okay. What kind of work have you done in the -- in the past?

JC: Just construction work is really about all I've ever done.

TM: Okay. Okay.

JC: Washed a lot of dishes.

TM: Probably inside and outside, huh?

JC: (Inaudible) I -- I washed out at the Highway Trailer Sales part-time, too.

TM: Oh.

JC: Out on Portland Road.

TM: Okay. What, ah -- what kind of re -- ah, relationship or, ah, situation do you have with, ah, Penny? Is she --

JC: Just a friend.

TM: Okay.

JC: There's nothing more than just a friendship type thing.

TM: And --

JC: She does her thing and I do my thing.

TM: Okay.

JC: So.

TM: And you share the house?

JC: Yeah.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 5

0000863

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Okay. How, ah -- do you own a vehicle?

JC: No.

TM: Okay. Does she?

JC: Yeah.

TM: What kind of vehicle?

JC: She owns an 'Eighty-one Chevy S10.

TM: Oh, okay. You ever use that or is that --

JC: Yes.

TM: Okay. So she pretty much lets you --

JC: Yeah.

TM: Okay.

JC: 'Cause when she -- she's pretty much alone.

TM: Hm-hmm.

JC: So when she gets off work, she likes being by herself, 'cause she went -- she went through some bad experiences just before I moved in.

TM: Oh.

JC: So.

TM: Break-up of relationship or something?

JC: No, she's been divorced for fifteen years. But sh -- her, ah, one of her friends, ah, broke in the house one night and beat her up real bad.

TM: Hmm. A male friend?

JC: Yeah.

TM: Okay. And, ah, so that's probably why she kinda likes to have somebody there at night?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 6

0000864

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: Yeah.

TM: Okay. Okay. Um, now I understand that, ah, Stan Groom, who's a parole officer, is -- is your PO, is that correct?

JC: Yes.

TM: Okay. What -- what kind of, ah -- ah, situation are you in as far as parole? Ah --

JC: I'm on ISP right now.

TM: What -- what's that stand for?

JC: Ah, tr -- supposed to be for a treatment -- (inaudible) affirmative treatment program. But the Parole Board wanted me to take a drug treatment program. Then when I went to Bridgeway, ah, Ed Shaw said I wasn't, ah -- I didn't need a drug treatment program. But I needed an anger management program.

TM: Hmm, okay.

JC: So I was taken off of my drug treatment program and put on the, ah, anger management program.

TM: Okay. And what -- what kind of conditions are with ISP? Is it ISP?

JC: Yeah.

TM: Okay.

JC: Ah, the condition, I go in (inaudible - door closing) on Tuesdays and Thursdays of every week and then one home visit a week.

TM: Oh, I see.

JC: Whenever he wants it.

TM: Okay. And, ah, do you usually go in at night or when do you usually go?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 7

000000

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: I usually go in at night to see him. Whenever -- best time for me.

TM: Okay. So you don't have like a set time you've got to come in.

JC: No.

TM: You just got to come in on that day.

JC: I -- I usually go in between three and five, is my hours, I usually go and see him.

TM: Okay. And so that started back on the, ah -- ah, fourth or fifth of, ah --

JC: No. That started pretty close at the end of December.

TM: Oh, I see.

JC: 'Cause I was down at High Street for a while with Dave Dunn, then they transferred me out because of my stipulation with my parole.

TM: Okay. I -- and part of those stipulations are the anger treatment thing?

JC: Yeah.

TM: Okay.

JC: (Inaudible)

TM: Okay. So, ah, you make a -- a pretty good, ah, habit of making -- being in there on Tuesdays and Thursdays --

JC: Yeah.

TM: -- I mean, that's a have-to kind of thing.

JC: Yeah.

TM: Okay.

JC: Unless I can't make it, I call in and I tell him I ain't (inaudible).

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 8

0000866

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Okay. What, ah -- I understand from talking to Stan that one of the nights that you went in was a Tuesday night, ah, back in January, is that -- ah, January seventeenth?

JC: Yes.

TM: Do you remember, ah, going in that particular night?

JC: Yeah, I went in late to see him that night.

TM: How late would that be?

JC: I didn't get in there till probably ten after five.

TM: Okay. And --

JC: Then he had about five other people ahead of me.

TM: So how long do you think you were there?

JC: I was there till about -- I didn't walk out till little after six.

TM: Okay. How long do you actually spend with the, ah -- ah, PO?

JC: About thirty minutes.

TM: Okay. So you got there, ah, about five -- ah, ten after five and, ah -- p.m., obviously. And, ah, you -- you think it was a little after six? Okay. Were you on foot that night or--

JC: Yeah.

TM: -- driving or what?

JC: I was on foot.

TM: And -- and, ah, so -- oh, I see. You were st -- you were living at the Monterey at the time, though.

JC: Yeah.

TM: You weren't out at Penny's yet. Okay. I was going to say, that's a heck of a walk. But even to the Monterey, that's twenty blocks or --

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 9

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: If -- if I -- if I worried about walking out there as much as I walked in this town, that's --

TM: Yeah, okay.

JC: I think I've walked this town three or four times all the way around.

TM: So you left the, ah -- ah, restitution center there a little after six.

JC: Hm-hmm.

TM: And, ah, where'd you go from there?

JC: Well, I went over to the one building over there, I don't know what -- what it is. I used the telephone.

TM: Ah --

JC: 'Cause I called my brother.

TM: Okay. The building there at, ah --

JC: Over by the, ah, Stan's office there. As you're coming in the driveway, that big building right there? 'Cause I used the telephone.

TM: Okay.

JC: And that --

TM: Could it be the big building in front of Stan's office?

JC: Yeah.

TM: Okay. It's either the Juvenile Department, then, or the Health -- is it that funny-shaped building?

JC: Yeah.

TM: That's the Health Department, then. Okay. So you called from a pay phone there or --

JC: Yeah.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 10

000000

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: Yeah.

TM: Ah, I'll stop the tape. The time now is, ah, 0939 a.m.

TM: The, ah, tape is back on. Ah, we've obtained a, ah, map of the area here. The same people are present and the time now is 0945 hours. Okay, John. This is a -- the Dome Building. This is Center Street right here.

JC: Hm-hmm.

TM: This is, ah, the Dome Building itself. Ah, maybe, ah -- and it -- this is, ah -- ah, I believe this is Twenty-fifth. Or it is Twenty-Fifth Street. So Park is, ah, over off this. Now, as I understand, you were walking down Center Street, is that right?

JC: That's right.

TM: Okay. Which si -- which side of the street were you on? The far side or the close side to (inaudible) --

JC: I was -- close side.

TM: Okay.

JC: On the --

TM: So that would be the north side of Center.

JC: Yeah, because, ah, right down here would be the, ah, the bus stop.

EM: Is that by the gas station down where you're talking about?

JC: Ah, yeah, about a block away from the gas station, pretty close.

TM: Okay. Let's figure out where Park Street is on this thing. That's the wrong side. Okay. Here's Park, ah, Avenue, right here. It's running -- and this is Center Street and actually -- let's see. This would be the way Center actually is. As you came walking down from the, ah, rest -- or the, ah, Restitution Center, right?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 15

0000873

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: Yes.

TM: Okay. So as you come down Center Street, here's Park and that's the gas station, that little white building right there that you're talking about, that's the gas station.

JC: Hm-hmm.

TM: Okay. And then you came along this, ah, north side of the street, here.

JC: Right.

TM: Okay. This again is the Dome Building. Where about were you, ah, where would you guess the bus part is?

JC: Let's see the gas station's here and probably it -- well, right down in here.

TM: Okay.

JC: Pretty close.

TM: Okay. I'll put an X right there and write bus stop. Okay. And that's the best to your knowledge.

JC: Yeah. 'Cause it's right in front of one of these buildings, here.

TM: Okay. And then --

JC: Let's see, there's a driveway that comes out, so --

TM: Right.

JC: -- it'd be right -- let's see. Is that a driveway coming out to over here?

TM: Yeah.

JC: Okay. The bus stop would be so far down this way.

TM: It'd be back more this way?

JC: Yeah. 'Cause it's the first driveway coming out.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 16

0000974

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Oh. Okay.

JC: You know where the blinking light's at, right here?

TM: Okay, is it pretty close to the blinking light?

JC: Yeah.

TM: Okay.

JC: The bus stop is.

TM: Blinking light --

JC: There's two of 'em.

TM: Right. So is it --

JC: (Inaudible)

TM: -- the first blinking light?

JC: It's right here. See, right here is, ah -- ah, CTP Program.

TM: Right. Okay.

(Knocking on door)

JC: Okay. And there's a -- there's a blinking light pretty close to that.

(Voices in background)

JC: They cross over right here. That's the blinking light right here. Should be a blinking light right here for people to cross. And there's another one down -- down farther.

TM: Right. Okay.

JC: In front of that green building down there.

TM: Right.

JC: And the bus stop's right across from the green building there.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 17

0000875

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Okay. And I believe that green building's called SRF. Salem Relaba -- relaba -- Rehabilitation Center.

JC: Rehabilitation Center.

TM: Yeah.

JC: Yeah.

TM: Got my tang tongled. (Laughter) So, we're talking clear down here, then, probably.

JC: Yeah.

TM: Okay. So --

JC: The -- the first -- be the first driveway.

TM: Okay. I'll put in a second X. I'll call it 2X, how's that? And that -- and that -- so that's about where it is, you think.

JC: Hm-hmm.

TM: Okay.

JC: 'Cause then there's another bus -- this -- this here is a bus stop, too.

TM: Down here by the dome.

JC: Hm-hmm.

TM: Which is about here.

JC: Yeah.

TM: Okay. So, ah --

JC: So, as I walking down (inaudible) -- So as I was walking down this way, okay, I got to right about here, the corner of the building.

TM: Of the Dome Building.

JC: Of the Dome Building.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 18

0000876

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Okay.

JC: All right? So I seen a commotion over here. All right?

TM: Whereabouts over here did you see that commotion?

JC: Well, I was here and it was right over in this area.

TM: Oh.

JC: Pretty close to that tree over here.

TM: Okay.

JC: And I was right in here somewhere.

TM: All right.

JC: All right.

TM: And you were still back over here.

JC: I was still back over here.

TM: Okay.

JC: And I caught this out of the corner of my eye. I seen one guy running. Four guys went down this way. There was two cars. White Chevy Malibu and a Ford LTD, which was green in color.

TM: Okay. Green, ah, LTD.

JC: Hm-hmm.

TM: And a white Chev.

EM: Malibu?

JC: Hm-hmm.

TM: I'll ask you a little bit more about those pretty soon.

JC: Okay.

TM: Okay. But they were parked clear over here on Twenty-Third.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 19

0000877

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

0000878

JC: Yeah.

TM: Facing which way?

JC: Facing this way.

TM: To -- to head north.

JC: Right.

TM: On, ah, Twenty-Third.

JC: Hm-hmm.

TM: Okay.

JC: So --

TM: And you're still right here.

JC: Yeah, I'm standing right here. I start to go this way and I heard 'em yell and one guy came running around this way here. Ah, went -- went down this way through here. And back over here. All right. Park Avenue -- right down the street. Got to run through an open field. So -- op -- behind --

TM: Okay. Now, let's move to this other map and here's the dome again --

JC: Hm-hmm.

TM: And so you're saying they ran this way.

JC: This way. 'Cause I took off behind this way and tried to cut him off down here.

TM: Okay.

JC: So we ran past this building, okay, and this is the -- a big open lot right here.

TM: Right.

[Typist's note: From this point on, tape very faded, hard to hear.]

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 20

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: Okay. And the houses are over here.

TM: Hm-hmm.

JC: He hit -- I hit Park. (Inaudible) down here and he took off down this way (inaudible)

TM: On --

JC: There's a four-way stop right there.

TM: Right.

JC: And he ran between two cars and I pretty -- I wasn't real close to him, I was about a block away behind him at the time.

[Typist's note: Tape clear again.]

JC: So he took off and ran behind a house and came back on the other side, 'cause as I went behind the house, I seen him take a turn and go down -- there's some green apartments down there by the school.

TM: Hm-hmm.

JC: All right.

TM: I know where that is.

JC: So he ran towards that way.

TM: Okay.

JC: Right. And I'm right behind him, probably -- still probably about a block behind him.

TM: Okay.

JC: Right. And then there's some -- a residential area over there, some houses.

TM: Hm-hmm.

JC: Right. So he went behind them houses and you know where, ah, the next street over, all the way down from the end of the school.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 21

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Market?

JC: Market Street. All right. When he got to Market Street, there's that, ah, it's a used car lot there --

TM: Hm-hmm.

JC: All right. And he went from Market Street all the way on down farther. From Market Street, the next street down. Let's see, I'm trying to figure out the name of the street. It's that next -- next street all the way down.

TM: Beyond -- beyond Market?

JC: Hm-hmm.

TM: And, ah --

JC: Yeah.

TM: -- well, you mean the one that runs north and south?

JC: Well, there's that -- there's that -- there's the store there on Market Street, a Safeway, I think it is, or Roth's.

TM: Yeah.

JC: All right.

TM: Jack's IGA?

JC: Okay. And there's this -- he took off there, he came back over and around and he went down that street and I lost him right behind -- I don't know what kind of -- like a Coke (?) place or something like that. It's a residential area over there.

TM: Okay.

JC: Right.

TM: Maybe near Lansing and, ah, Sunnyview?

JC: Yeah. Pretty close to that.

TM: Oh.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 22

0000830

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: And that's where I lost him, right -- right behind the house there, too.

TM: Okay. Which one was it that you were chasing?

JC: It was, ah, the guy that I described to you.

TM: Okay, and what did you -- do you know if he's the one that did anything or what do you --

JC: I can't say that he did or not. I seen him leave the scene after I seen the commotion take off. And I don't know --

TM: What kind of commotion did you see?

JC: All I seen was there's like four or five guys together. All right.

TM: Hm-hmm.

JC: Then I stood there for a minute and like one guy spotted me or something, then I just seen 'em drop some guy and went -- four went that way and the other guy went that way.

TM: Okay. Somebody fell.

JC: Hm-hmm.

TM: Did --

JC: And at that time, when this guy was running, all right, there's some cars parked. All right. The lot right here. Okay.

TM: Oh, in this lot?

JC: Right. And he threw something in that lot right here.

TM: Okay. So right along here, he threw something.

JC: Hm-hmm. 'Cause I seen his hand go out like that.

TM: Okay. All right.

JC: I didn't know whether it was a knife or a pistol or anything.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 23

0000881

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: What did, ah, it appear -- you -- you didn't know. Okay.

JC: I only thought about trying to catch the guy.

TM: The guy, ah, get -- ah, that fell. Let's go to this bigger picture here. The guy that, ah, fell, whereabouts was he?

JC: I can't really say exactly where he fell at, 'cause I was here. I didn't come around the building like this. I went behind the building like this.

TM: Okay. So you're running this way.

JC: Hm-hmm.

TM: I'll make a -- a dotted line that he kinda ran, like this, huh?

JC: Hm-hmm.

TM: But -- and then he came around this way?

JC: Yeah.

TM: You know if it was the same guy here that you saw here?

JC: There was one other guy. I can't say if it was the guy that I saw standing here or the guy that I chased through here.

TM: How about if it was just a jogger that had just happened through there?

JC: Jogger? Most joggers in this town have those suits on.

TM: Okay. So I guess what I'm trying to get at is, by clothing and so forth, do you know that the person you saw running over here was one of the people you saw over here?

JC: Right. 'Cause all the people had dark clothes on --

TM: Okay.

JC: -- at the time.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 24

0000882

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Okay. I guess that's what I was trying to get at. That pen doesn't seem to work too well on these photos. Yeah, this is better. So he comes around like this.

JC: Hm-hmm.

TM: And --

JC: About the time I -- I'd catch him, he was about right here, pretty close. And I'm just hitting the parking lot right on this side.

TM: Okay.

JC: So there's probably about a block.

TM: Okay.

JC: Between the two of us.

TM: Okay. And he just keeps going this way?

JC: Yeah.

TM: Hmm. Maybe, ah, if you could fa -- ah, draw his, ah, kind of with dots, wh -- how he kept going.

JC: Okay. He came down about to here. And hit that little --

TM: Okay.

JC: All right. And he came on down.

TM: Just right down the road, then.

JC: Hm-hmm.

TM: And that's Twenty-Fifth.

JC: Hm-hmm. All right. So --

TM: Now, on this one, what you've just drawn, is, ah, come here along here --

JC: Hm-hmm. Okay. And here's that, ah, where them cars sit right here.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 25

0000883

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Hm-hmm.

JC: Right -- right in here that something was thrown.

TM: Okay. Now, there's parking both in these trees along here, as well as on this side.

JC: Right.

TM: Which side would you say it was thrown on?

JC: This side. Been --

TM: Okay.

JC: -- on my left-hand side.

TM: Okay.

JC: All right.

TM: Was there car -- how many cars were there?

JC: It was probably six or seven cars there at the time.

TM: Okay. Okay. So right --

JC: I remember a van sitting there and a Volkswagen.

TM: Okay. Wh -- what kind of van was it?

JC: Probably a -- like a Dodge.

TM: Okay.

JC: Green in color. Looked like the van Buck Burgess' wife drives -- girlfriend drives. But I don't know what kind it is.

TM: Okay. What, ah -- what -- how about the, ah, V-Dub, what's that look like?

JC: It was, ah, just a small VW.

TM: Bug?

JC: Yeah.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 26

000000

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: What col --

JC: White. And there's a few other different cars. New -- new cars that night.

TM: Okay.

JC: Don't ask me what kind they were. I don't know what kind they were.

(Side 2 of tape)

TM: The tape's been turned over. The time now is 0958 hours. Okay. So --

JC: See --

TM: -- somewhere in here --

JC: See, but he ran through these trees (inaudible) down through here.

TM: Okay.

JC: And went on over down into here.

TM: Crossed the street here.

JC: Hm-hmm.

TM: Did he -- wh -- what route did he take? Just straight across here?

JC: Yeah. Straight across.

TM: So he didn't go along D.

JC: No. No. He wasn't far off of D, 'cause this would be D right -- right in here, right?

TM: Right.

JC: Yeah. It wasn't -- he was pretty close, right down that line.

TM: Okay. So basically right through here?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 27

0000885

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: Hm-hmm. Right. Then when he got to the stop sign down here, he crossed the street over to the other side of D Street down here.

TM: To this side --

JC: Hm-hmm.

TM: -- or this side? The far side?

JC: Yeah, far side.

TM: Oh, okay.

JC: D Street. And then he ran down to them apartments that sit down about -- there's some brown apartments that sit there on D Street, on the left-hand side, as I'm facing.

TM: Hm-hmm.

JC: Well, he started to turn there, but he went straight.

TM: Okay.

JC: And there's some green apartments, that he ran through the parking lot and through and that's the same way I followed him out.

TM: Okay.

JC: Then he ran down this street there, 'cause there's this trailer court that sits on this -- on this side of the street, going down this way. The trailer court's here. And this school sits over here and he kept running and there's that residential area right there and I chased him through that. And there's a car lot sitting right there. And he ran through the car lot. There's a fence in the back, so he had to go around the fence. As he came through, he ran through the parking lot. By then, I'm losing my breath, trying to keep running, and he runs over and there's a -- I don't know whether it's a restaurant or something there. But there's another car lot sitting on the other side, pretty close by right there.

TM: Right.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 28

0000886

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: Then he came back around, behind the store and down. And he ran all the way down and he turned about, what is it, half a block or so, and there's that big white building sitting right there. He ran through a field right there and I lost him at probably the third house. I tripped over a fence behind it. That's where I lost him at. 780000

TM: Okay. What, ah -- why didn't you, ah, get a hold of us sooner?

JC: I told Stan I wasn't talking to nobody, 'cause I said -- my own feelings about it was -- I went to -- when I was in Nebraska, I went to the detective back home on another murder beef that I seen happen. All right. Sort of like the same I -- same thing here. All right. Well, three days later they came and arrested me for the murder. Which I didn't commit at the time.

TM: Hm-hmm.

JC: So I laid in jail for almost two months under suspicion of murder. I told Stan I didn't want to do -- I told him I (inaudible) State Police.

TM: Okay. What, ah -- was this a detective back home that you knew?

JC: No, I didn't know the guy.

TM: You remember his name?

JC: No.

TM: Okay.

JC: No, I don't.

TM: And that was in Lincoln?

JC: Yeah.

TM: Okay. What, ah -- was that at the same time you were having problems with your other stuff? The burglaries and --

JC: Yeah.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 29

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: -- car theft or whatever back there?

JC: Car thefts.

TM: Okay. So basically, ah, the reason you didn't report this was you, ah, felt you'd get arrested for it?

JC: Yeah. 'Cause see, last time when I -- you know, they came in and talked to me like this. Well, they came out to my mother and my father's house. And they asked me if I'd come down to the police station and talk to 'em and I told 'em, "Yeah." So as I'm setting there I did, ah -- told 'em everything and took a lie detector test and all that. And I told, ah, the police officer, I said, "I'm not covering up the murder for myself." See, 'cause that's what he tried to blame me for that, too. After they came out to the house, they arrested me. 'Cause, see, he called at the house and he said, ah, he wanted to talk to me and so when I got down to the police department, I walked into the little room. There was about seven cops there.

TM: Hm-hmm.

JC: And he said, "I'm arresting you for the murder." So I told myself, "Never again."

TM: Okay. What made you change your mind?

JC: Well, I talked to Stan about it. You see, I had a -- every time I have a -- a -- I have contact with the police, I got to talk to Stan about it.

TM: Hm-hmm.

JC: So I was talking to him about it. And plus when I did my newspaper article, the guy that did the article asked me if I knew anything about the murder. I told him no. And he said, "Are you sure?" And I said, "I'm positive I don't know anything about it." So that's why I didn't come and say nothing. And then Stan talked to me about it. He said, "I can't sit here and let it go." And I says, "Stan, I don't even want to talk to nobody about it."

TM: Hm-hmm.

JC: I said, "If I do, I'm going to do it on my own will."

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 30

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Okay.

JC: 'Cause I told Stan sorta how it happened last time. That I went in and talked to the police back home about the murder. Then three days later I was arrested for suspicion of murder.

TM: Okay. Are you in any way involved in Francke's murder?

JC: No. I didn't even know the man.

TM: Okay.

JC: On -- only thing I knew about -- about the man, he was the head of Corrections in Mex -- New Mexico and here.

TM: Okay.

JC: When he -- when the riot happened back home.

TM: Okay.

JC: And, ah, when I was in the pen, living in E Block, there was two Mexicans sent from New Mexico that lived on both sides of me.

TM: Okay.

JC: And they kept -- they kept on talkin' all the time, that sooner or later their people would get him.

TM: Okay. You remember their names?

JC: Huh-uh. Antinio (phonetic) (inaudible) Was one of 'em. I can't remember the other guy.

TM: Antinio?

JC: Antinio (inaudible). And the other guy, I only knew him by Juan.

TM: Okay.

JC: 'Cause they said -- there was conversation that I heard one night about two o'clock in the morning, said somebody would kill his ass.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 31

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Kill --

JC: Francke.

TM: Okay. How -- um, and so -- so that's how you heard about it down at -- where did you hear about it at?

JC: I -- I heard about it when I was in the pen, that sooner or later, somebody was going to get him for the --

TM: Yeah, and then when it --- where were you when you heard that he had been --

JC: I was -- I was in my, ah, prison cell at that time.

TM: When he was killed?

JC: No. I was on the streets.

TM: Okay. That's what I mean. Where were you at when he was -- when you heard he had been killed?

JC: I was sitting at home.

TM: Wh --

JC: And obviously at the Monterey Apartments.

TM: Okay.

JC: The next morning.

TM: Okay. And was -- when -- was that the morning after all this happened?

JC: Yeah. So that's when I figured that it was Francke. Then I set there for a long time and, um -- ah, Floyd Bunn that runs the place asked me what was wrong. I said, "I don't want to talk about it."

TM: Okay.

JC: So he didn't ask no further questions on it. He just let me be.

TM: Do you, ah, suspect somebody in particular of killing Francke?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 32

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: I (inaudible) My understanding would be it'd have to be somebody that had a big grudge against him from Mexico.

TM: Okay.

JC: 'Cause of what the talk was there in the pen for a while. 'Cause I -- I didn't hardly talk or associate with those people in the pen. And I guess somebody that was -- got killed in there was one of the big kingpins and his family had a lot of money. And they tried saying that the riot was behind Francke's fault and all that shit. So my suspicion would be -- it wouldn't be no contacts here. You'd have to get contacts out on the street. People that's came over.

TM: Okay. Did you kill Francke?

JC: No.

TM: Do you, ah, know somebody that was, ah, maybe at the Release Center that night?

JC: No.

TM: That might have been going through there at the same time you were, that could be involved?

JC: No. I don't know anybody at the Release Center.

TM: Okay. Were -- that was checking in with the PO's and that kind of thing, same thing you were doing.

JC: No.

TM: Okay.

JC: I didn't see no Mexicans in there that night.

TM: Okay. And you feel that the person you chased was a Mexican?

JC: Was a Mexican.

TM: Okay. Um, have you ever thought about --

JC: Doing murder?

TM: Yeah.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 33

1680000

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: Yeah.

TM: Okay. And that was --

JC: Yeah, I killed my sister, Katie.

TM: Okay. Have you ever talked to somebody else about --

JC: No.

TM: -- doing something like that?

JC: No. My family knows about it and a few friends and why I (inaudible).

TM: Okay. If you had -- if you had, ah, killed Francke, why would you have?

JC: Probably on a regret behind something.

TM: Something that happened?

JC: Yeah.

TM: In the institution or something or what?

JC: Within my family or --

TM: Okay. What would keep you from doing something like that? If you didn't do this, why wouldn't you?

JC: I had no regrets against the man.

TM: Okay. Like in revenge, you mean?

JC: Yeah.

TM: Okay.

JC: Yeah. 'Cause the only time I go after people is when they piss me real off or I had the revenge to go after them. And I don't carry a knife or a gun.

TM: Okay. Yeah. How was he killed?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 34

0000892

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: By a knife. I can only say that now, because I heard about that.

TM: All right. What do you think should happen to somebody that does something like that?

JC: Hah. What everybody gets for first degree murder. Premeditated murder. Death. That's my -- that's my own opinion. And I'm on both sides of the fence.

TM: Okay. Would you, ah -- what do you think the person is doing that -- ah -- ah, that did that, is feeling now?

JC: It's hard saying. All depends if he's ever done time.

TM: Okay.

JC: I could do a murder and get away with it and never worry about it.

TM: Why?

JC: It's just the way I am inside.

TM: You mean as far as being able -- being, ah, able to live with killing somebody, that wouldn't --

JC: Yeah.

TM: Okay.

JC: Yeah, it wouldn't bother me.

TM: All right. What, ah -- so if you killed Francke, it wouldn't bother you.

JC: No.

TM: It -- would you say you had a --

JC: I'm very --

TM: -- reason, though?

JC: If I had a reason, yeah.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 35

0000893

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: No, no. But do you have a -- would you have had a reason?

JC: No. No.

TM: Nothing happened to you here in this Oregon system that you'd say pissed --

JC: No.

TM: -- you off.

JC: No. Even though I didn't like some guards and -- and things. Was still -- I ain't gone after them and I seen 'em. See ninety-five percent of them guards that work in there.

TM: Okay.

JC: When I go to Lancaster Mall and walk out there with her. I hold no regrets. I left it all behind me in the walls.

TM: Okay. Do you, ah -- would you be willing to take a polygraph regarding the information you gave us?

JC: I've told Stan I won't take a polygraph.

TM: Even to, ah, so we can verify that what you saw --

JC: I told Stan I would take a polygraph test after I find the man that I chased.

TM: Okay.

JC: And I'm out every night doing it. After I talked to you last night, I went out to Portland Road and down a couple other ones. Where most of the Mexicans hang out. I told Stan it might take me a few days, but I'll find the guy who -- I've been -- I've been on it every day and every night since I've been -- chasing. And especially, I started working harder after I found out it was Francke that had been dead. Stan asked me if I was in the money. I said, "I don't give a fuck about no money."

TM: All right. There are some, ah -- this area was all cordoned off and searched. Ah, there are some shoe prints that we have that we can't identify who they belong to. You say you were, ah -- ah, wearing cowboy boots.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 36

1680060

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

JC: I was wearing these boots.

TM: Those boots right there?

JC: Yes.

TM: Okay. And, ah, so what we'd like to do is be able to maybe photograph the bottom of those, if that's okay with you.

JC: It's okay.

TM: Okay. Do you have, ah, any, ah, knives or anything?

JC: No.

TM: Back at your -- where you live?

JC: I have one in my bedroom.

TM: One in your bedroom. Okay. Would it be, ah, okay with you if, ah, we went out and looked at that?

JC: Yeah.

TM: Okay. Would you give us consent to look through your -- your room?

JC: Yeah, you can look through my room.

TM: Okay. By consent, I simply mean that, ah -- ah, your permission. We don't, ah, we're not telling you you have to, ah, we're telling you it's up to you.

JC: Yeah.

TM: Okay. I have, ah --

JC: The only -- the only thing that I'm going to ask --

TM: Okay.

JC: 'Cause I'll -- I'll work with you. But I want to find the guy that did it. And when I do, I'll come and take a lie detector test.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 37

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Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: All right. Well, obviously, we're all for finding the guy that did it. That's the name of our -- the -- the game, as far as we're concerned. I need to, ah, go through a couple of cards here, one of which is a consent. The other is a -- a Miranda card, and the reason I have -- need to read Miranda is just to let you know that all this -- that everything that, ah, you do in regards to this consent is free will. Okay? We in no way -- can we, ah, force you or anything else. Do you understand that?

JC: Yes.

TM: Okay. It is my duty to warn you before you make any statement that you have a right to remain absolutely silent. Anything you do say can and will be used against you in a court of law. You have a right to consult an attorney before making any statement. If you are without funds, you have a right to a court-ap -- court-appointed attorney at public expense. You have a right to have your attorney present when and if you do make any statement. You have a right to interrupt the conversation at any time. And anything you do say must be freely and voluntarily said. Okay? Do you understand what I read to you there?

JC: Yes, I do.

TM: Do you have any questions about those rights?

JC: No.

TM: Okay. I read you that so I could read you this. All right? And it simply says, "Consent. I voluntarily consent to the search of my person, property, premises, or property within my custody or control. I also consent to the seizure and analysis of any article discovered in this search. I understand that I may refuse to give my consent. No threats or promises have been made by any person to make me give this consent." Do you understand that?

JC: Yes.

TM: Okay. By saying you understand that, ah, are you still willing to allow us to accompany you to, ah, your residence, ah --

JC: Hm-hmm.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 38

9600000

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Okay. Ah, if I could, ah --

JC: I got to hold a head of time and have them put the dogs in.

TM: Oh. (Laughter) There's some, ah, dogs that, ah, live at that house, also?

JC: Yeah.

TM: Okay. I'll, ah, date and time these. Ah, the time that I'm filling them out is 1014 hours. (Pause) And you can look those over. That's, ah, the rights card that I read.

JC: You know I've got 'em memorized by heart.

TM: Oh, okay. (Pause) And then that's the consent card. You have that one memorized, too?

JC: No.

TM: Oh, okay. (Laughter) That one's not quite as common. Okay. Thank you. Ah, also what we'd like to do is, ah, once we get in the car, would be to, ah, drive, ah, maybe that route where you, ah, chased him and where it started from and where you were at when you saw him and stuff like that.

JC: Okay.

TM: And that would give us also a -- a pretty good idea. And, ah, we can do that right now. What -- ah, do you have to call somebody to put up some dogs or something?

JC: Yeah.

TM: Who -- who -- who would that be?

JC: A friend that I have staying at the house.

TM: Oh, there's another person living there?

JC: Yeah.

TM: Who's that?

JC: Her name is Nancy Smith.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 39

0000897

Statement Continuation

#89-2454. (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Nancy Smith? Okay. Is she the --

JC: You probably all know her.

TM: N-no, I -- I -- not off-hand.

JC: They know her downtown.

TM: Oh, is that right?

JC: Yeah.

TM: Okay. Off the top of my head, I don't know her. She been in problems or something?

JC: Yeah, she's been in and out. She ain't never been in the OWCC, yet, but --

TM: Yet. (Laughter) Does that -- does that mean there's, she might make it some day? What kind of things --

JC: She -- well, she -- she's straightening -- well, ah -- ah, couple guys she knows did -- does a lot of burglaries in town.

TM: Oh.

JC: All right. They was living with her at the time at the Monterey when they picked up a bunch of pist -- ah, rifles and stuff. She was living at the apartment at the time.

TM: Oh, who were they, do you remember?

JC: Ah, I know the guy by the name of Bob. Two Bobs.

TM: Oh.

JC: That's all I (inaudible). But I met her and we've been friends and she's staying out there with me for a while, trying to get her shit together.

TM: Okay.

JC: So, she's doing pretty good. Ain't getting no hassle. She ain't getting in trouble with the law. Fuck, we sit at home most of the time. Besides when I take the truck and leave for a few hours.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 40

Statement Continuation

#89-2454 (F)

Statement of Johnny Lee Crouse Date 02/15/89 0921 hrs

TM: Okay.

JC: Just driving around town. Go see friends. And (inaudible)

TM: Ah -- okay. Either one of you taking drugs now?

JC: No.

TM: Okay.

JC: Neither one of us use it.

TM: Ah, she on parole or probation?

JC: No.

TM: Okay. Are you doing UA's?

JC: Well, when they ask for one, I do.

TM: Oh, okay. And they're coming up clean, huh?

JC: (No audible response)

TM: Okay.

JC: I do everything they tell me to do.

TM: Okay. All right. Ah, I'll turn off the, ah, tape at, ah, this time and then, ah, the next thing we'll do is we'll, ah, -- ah, drive out and try to find this route as best we can and then go to, ah -- ah, the home out there. Do you need to, ah, go to the restroom or anything before --

JC: No.

TM: -- we get started? Okay. The tape, ah, will end now. The time is 1018 hours, ah, 02/15/89.

TM = Tom Mason, Detective, Salem Police Department, 249-03348

EM = Ed Mouery, Detective, Oregon State Police

JC = Johnny Lee Crouse, 06/14/57

skp: 02/16/89 1635 hours

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 41

7. UNRECORDED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57

RCM: Um, the time is now 11:42 AM on Tuesday, April 4, 1989. We're in an interview room at the Oregon State Police office, District II Headquarters in Salem. Present in the room are Johnny Lee Crouse, that's C R O U S E, isn't it, John?

JLC: Yes.

RCM: And, uh, your date of birth is 06-14-57?

JLC: Yes.

RCM: Okay. Present with us is Captain Forbes from the Corrections Division, Detective Ken Pecyna from the Oregon State Police, and I'm Randy Martinak with the Department of Justice. First off, this is a tape recorder, uh, John, and do you understand it is a tape recorder and that this conversation is being tape recorded?

JLC: Yes, I do.

RCM: Okay, then I'll ask you this...

JLC: May I ask if I'm being arrested for this charge.

RCM: No, at this time you have not been arrested. Okay? However, you are in the custody of the Corrections Division, and because you're in the custody of the Corrections Division I need you to understand your constitutional rights. I also need you to understand that this is a tape recorder and do you object to this being tape recorded?

JLC: No, I don't.

RCM: Okay. First off, you have the right to remain silent, do you understand that?

JLC: Yes.

RCM: Anything you do say can and will be used against you in a court of law. Do you understand that?

JLC: Yes.

1 SUBSCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 2

RCM: Do you understand that you have the right to have an attorney and to have that attorney present with you before you answer any questions, if you wish one?

JLC: Yes.

RCM: And, do you understand that if you cannot afford to hire an attorney, one would be appointed to represent you before any questioning if you wish one.

JLC: Yes.

RCM: Okay, do you have any questions about those rights?

JLC: No.

RCM: Do you wish to talk to us now?

JLC: Yes.

RCM: Okay. Uh, what we're talking about is the murder of Michael Francke, the Director of Corrections for the State of Oregon, which occurred on January 17, 1989. Can you tell me what you had to do with that murder?

JLC: I was approached by a man outside the P.O.'s office. He said his name was Juan. Asked me how I felt about Corrections. I told the man I didn't like Corrections, I didn't like people in high places, and he told me he'd meet with me in a couple of days. I met him at the gas station addressing Stan Groom on the night of the 17th. Asked me if I'd take care of Francke for \$300,000.00. He gave me \$1,500.00 and I told him I'd take care of it. He told me the Dome Building's just down the street, and he told me, after he read it in the papers that Michael Francke was taken care of that he'd meet me at the Chumaree within the first two weeks of April of 1989 to finish paying me off. I took the \$1,500.00. I went down to the parking lot of the Dome Building and stood across the street. As Michael Francke was gettin' in his car, I approached him. I didn't say anything to him. As he was leaning up out of his car, he put a hand up and I hit his hand out and I stabbed him. After I stabbed him once or twice, I can't remember it, I started taking off and as I got behind the car I started running towards Park Street, and I decided I'd get back to the Monterey. As I was coming back, he was strugglin' around the car and I pushed him back up against the car and I took off running behind, across the parking lot. Then, uh, I looked back and he was trying to go toward the office and I just kept on running. When I got back, I went down 17th

0000907

1 UNRECORDED TAPED STATEMENT GHQ #8900672
MURKIN INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 3

and cut over a block to get off the main street. When I got to the Monterey, I noticed I had blood on my shirt and my hands, and I washed my hands. Burnt the shirt. Washed off the knife and put it back. Then, I went out to a friend and bought some cocaine. I just been doin' drugs. Then, I went in to see Stan about a week later and told Stan I knew about it, because I wanted to get it off my chest. And, I kept calling my brother because I wanted to talk to somebody and I didn't know how. I ain't told nobody about it, but a lot of people knew I was questioned about the murder of Michael Francke.

RCM: Okay. This person who approached you at the office of your parole officer.

JLC: He was a well dressed man, Mexican. Name Juan, which means John in English. Drivin' a, drivin' a rental car.

RCM: Okay. The first time you met him was about when?

JLC: About the 11th or 12th, between the 11th and the 13th when I first saw him.

KPP: And, where, where was this at?

JLC: Outside of my P.O.'s office, over towards the, there's that big building there. I think, I don't know the name of the building, but there's the Juvenile Center, Juvenile Court I believe it is, on one side and there's another building on the other side, and he approached me right there the first time when we talked for a few brief moments. And, nothing was said until I saw him at the gas station that night.

RCM: Okay. Then, that's the night of the 17th?

JLC: Yes.

RCM: You left Stan Groom's office at about...

JLC: 6:10, 6:15, I seen this guy about 6:30.

RCM: Okay. You walked from his office back down Center Street to what you referred to as a service station, and that's...

JLC: Yeah, on the corner of, uh, uh, Center and Park.

RCM: Okay.

0000903

1 IBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 4

JLC: I made a phone call to my brother.
RCM: Okay. You called your brother, in
JLC: Nebraska.
RCM: Nebraska. And, your brother lives where?
JLC: In Malcolm.
RCM: And, his phone number is?
JLC: 796-2537.
RCM: And, the area code?
JLC: 402. His name's Larry Crouse.
RCM: Okay. You called and you, why did you call and talk to him?
JLC: I wanted to call him, I wanted to tell him goodbye.
RCM: Okay. So, you finished the phone conversation from that phone booth?
JLC: Um hum.
RCM: Then, you were approached by this Juan?
JLC: Juan pulled in and he called me Pizan.
RCM: He called you Pizan?
JLC: Yes.
RCM: And, that's ... why did he call you that name?

CRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 5

JLC: Because I have Italian in me and I even go by it if I don't want somebody knowing my real name.

RCM: Okay. So, you told him that name during your previous contact with him?

JLC: Yes. He asked me my name and I said to call me Pizan.

RCM: Okay. Did he ever ask you if you'd done time?

JLC: Yeah.

RCM: Did he tell ya, did he ask you

JLC: I told him that night, I said I just got out of the pen. I did 8 years.

RCM: Did you tell him what you'd done time for?

JLC: No.

RCM: Did he ask?

JLC: No. He just asked me if I'd like to make some money.

RCM: Did he ask you if you knew Michael Francke?

JLC: Yeah. I told him I've seen the man.

RCM: Where did you see Michael Francke before?

JLC: When he was walking on the tier with administrative segregation on E block in Oregon State Penitentiary.

KPP: Do you remember when that was?

JLC: No.

RCM: Did you have a conversation with Michael Francke at that time?

JLC: I had one conversation with Michael Francke, asking him what I could do about getting my custody.

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RIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 6

RCM: When you say you asked about what you could do about getting your custody, what you mean is, you wanted to be outside the walls in some other program?

JLC: Yeah, I was trying to get my custody, matter of fact I even talked to Captain Forbes about it.

RCM: Where did you want to go?

JLC: I was trying to go to the forest camp or the annex.

RCM: And, what did Mr. Francke tell you at that time?

JLC: He said go through your counselor.

RCM: Okay.

KPP: Could you describe this guy that approached you, uh, Juan?

JLC: He's Hispanic, medium built guy, I can't say, he's about, probably about 5'11.

KPP: Okay. Did you ever see him standing?

JLC: No. The only time I seen him was when he was in the car.

KPP: Well dressed. Uh, what about age?

JLC: Well dressed. Uh, he was in his mid, say between 55 and 59 or somewhere right around in there. And I think, sort of a....he didn't look like a real old guy, but he wasn't young, either.

KPP: Okay. Was there any, uh, facial features that you recall? How he kept his hair, or anything?

JLC: He combed his hair straight back. He wore sunglasses, clean shaven guy. Uh, wasn't thin faced. He had high cheek bones.

KPP: Any facial hair?

JLC: No. Clean shaven guy.

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NSCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 7

KPP: Okay.

JLC: He had sideburns, but the sideburns were cut up high, too.

KPP: Okay. Any earrings or anything like that?

JLC: No, no.

KPP: What kind of clothing was he wearing?

JLC: A three piece suit.

KPP: Color?

JLC: Dark.

KPP: Was there any design to it?

JLC: No, not really. Not that I noticed.

KPP: Did you notice any uh, watch or anythi

JLC: He wore, he wore a gold watch and he had two rings on one hand and one ring on another, I think.

KPP: Do you remember which hand was which?

JLC: On his left hand, he had two and on his right he had like a, uh, uh, just like a bright onyx ring.

KPP: Okay. When you talked to him, uh, did he make any other conversation with you?

JLC: Just asked me how I was feeling, and I told him I was feelin' just fine. He asked me if I do drugs. I told him yes. Then, uh, he says "You're not scared of doing this, are you?" And, all I was thinkin' about was the money. Then, he handed me the \$1,500.00.

KPP: What about the first time when you talked to him?

TRANSCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 8

JLC: The first time, it was just a brief and he told me that he'd get back in contact with me, that he might have me do something.

KPP: Uh, he didn't talk to you about any background on him, or anything like that?

JLC: No, no. I didn't really ask.

RCM: Did he, did he ever tell you why he wanted Francke dead?

JLC: No. He told me that his brother was killed in the New Mexico riot.

RCM: Okay. Did he tell you when that happened?

JLC: No, he just told me the last, the riot they had in New Mexico.

RCM: And, he said his brother was killed?

JLC: Yeah.

RCM: Okay.

KPP: He didn't go in any detail about it?

JLC: Hum uh. He just told me the money's good.

RCM: Did he tell you where Michael Francke's office was?

JLC: Yes, he did.

RCM: Where did he say?

JLC: He said it, the night of the 17th, he told me Michael Francke's office is just down the street at the Dome Building.

RCM: Okay. Did he say that he, that Michael Francke was there?

JLC: No, he didn't. I just went down there and stood for awhile.

T. SCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 9

RCM: How did you know when this person came out that it was Michael Francke?

JLC: I seen him that once, and I seen his picture in the paper a few times, and I recognized him from that.

RCM: Okay.

JLC: Then, as he started walking, as I seen him walking out of the Dome Building towards his car, or not his car, I just started walking up that way and he got to the car. Then, I knew it was Michael Francke, when I seen his face.

KPP: Why did it have to be on, on that day?

JLC: It didn't have to be. It could have been any day. But, I knew, I figured that was my opportunity, so I took it. Then, I just, oh, seen Stan. After I talked to the other two investigators, and I had an uneasy feeling. I told myself I'm going to get busted for this. Then, I just stopped seeing Stan. Then, I was just hiding out, waiting for the money so I could take off.

KPP: So, that money hasn't come yet?

JLC: What's it...() the 2nd I went to the Chumaree and I was standing there waiting, and I had an altercation.

KPP: The 2nd of ...

JLC: April, last Saturday.

KPP: Okay.

JLC: And, uh, then I had an altercation and got arrested for Assault IV.

RCM: What did that altercation consist of?

JLC: I grabbed a woman, and she screamed for help, and I just took off running.

RCM: Why did you grab this woman?

T SCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 10

JLC: Can't say. I really don't know.

KPP: Well, could you....let's go back over to the Dome Building, then on the 17th. Could you describe again what went on and try and remember as much detail of where you were, what things you did, and what Michael Francke did.

JLC: I stood across the parking lot.

KPP: Uh, where at in the parking lot?

JLC: Over this way, ... circle.

RCM: You're gesturing that you were north and west of the Dome Building?

JLC: Yes.

RCM: Ken, here, has a photograph of the Dome Building and, uh, this is the uh, this is the Dome Building, this is Center Street here, this is the circle where, uh, there are two circles actually in front of the Dome Building. Uh, this is where the construction was going on over here. Okay. Can you uh, can you point out where you were standing? The, the service station you were talking about is back up the street, this way?

JLC: Yeah, uh huh.

RCM: Okay. Okay, can you just mark on that photograph where you were, uh,

JLC: The front entrance of the Dome Building is right here.

RCM: Uh huh.

JLC: I was standing back over here.

RCM: Okay. You made an ink mark that indicates that you were, uh, on the uh, about the, I guess you'd call that the 12 o'clock or one o'clock position, uh, on the circle

JLC: About the one o'clock position, I guess.

T. SCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 11

RCM: Uh, on the parking circle in front of the Dome Building. So, you were actually toward the driveway that goes back out...

JLC: Yes

RCM: toward that hospital construction that was going? Okay.

KPP: North, north is up here.

JLC: Um huh.

KPP: And, south and west and east, so

RCM: Okay, so you, you just stood up in here?

JLC: Yeah.

RCM: Okay. And, you, and you saw...which way did, uh, Mr. Francke come out of the building?

JLC: He came out going down the steps and headed over towards this way.

RCM: Okay.

JLC: He had his car parked right over here. Got in his car to drive his car

RCM: Can you, can you put an X where his car, about where his car was parked? Do you remember, exactly where it was parked?

JLC: I'm trying to. His car was parked right over here.

RCM: Okay. Can you put an X there, where that car was parked?

JLC: Right about here. Okay, yeah, because I came across the concrete right here.

RCM: Okay.

JLC: And, as he opened the car door right here...

T. SCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 12

RCM: Um huh..

JLC: I hit him. I came up, uh, this way, and when I knew it was him and he leaned down to put something in his car, and he leaned back up and that's when I got him. I started taking off running behind here. I figured I'd get back up here to go down to Park Street to Buck Bridges' house. Instead, I came back and knocked Michael Francke back towards his car and took off running. I ran down here, down behind here. And, I ran through this, like apartments here, I guess. And there, they're a medical center, this'd be it right here. I came out through here. I ran down to 17th Street and I cut over a block and I went back to the Monterey.

RCM: Okay.

KPP: Where were you standing, earlier? You said you were standing over here by the Dome Building somewhere. Do you recall where you were standing?

JLC: I wasn't standing by the Dome Building.

KPP: Okay, well, it looked like you had pointed over there, uh, and then you said you walked across the concrete.

JLC: See, when I came up here, I walked down Center Street.

KPP: Okay.

RCM: Um hum.

JLC: Okay, and I cut across the lawn right here, and I was looking at the building, and I just came over here and I stood.

KPP: Do you remember where you cut across the lawn, and

JLC: Yeah, there's that sidewalk coming across, right here, there's a blinking light right here.

RCM: Okay.

JLC: I went, and there's a little railing here. I just walked around the railing and up over the grass and

I SCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 13

down this way and just stood right over here.

RCM: Okay. You, you're sure you were right here?

JLC: Uh hum. I know that

RCM: You've seen that little concrete building that's out here in the lawn, here?

JLC: Probably vaguely, I have.

RCM: Okay.

JLC: I wasn't paying much attention, just trying to get away after I did it.

RCM: Okay. So, you stood here, and how long did you stand in that position, right there, waiting for Michael Francke to come out?

JLC: I can't really estimate how long. I was there quite awhile. It was around 7:00 when it all happened, 7 to 7:10.

RCM: Okay.

JLC: When, when I, when I stabbed him.

KPP: Okay. Well, how far would you say that Michael Francke was away from the car when you said you pushed him back to the car?

JLC: Wasn't very far away from it, a couple of feet, when I pushed him back up against it.

KPP: Okay.

RCM: Was it further than the width of this room, here?

JLC: No. No.

KPP: Did you...

WRITED TAPED STATEMENT GHQ #8900672
MURKIN INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 14

JLC: See, then, as I was running down the street I looked back over my shoulder and he was trying to get up this way.

KPP: Could you describe..do you remember what you did, as far as where you went over here a little more, can you remember that?

JLC: Okay. I went down, I ran down here, and as I got about here

KPP: You could put, if you could put like dots or something like that on your, on your direction on what you did and describe like what you were going through, and, and what you were thinking as you were going.

JLC: All I was thinking about is that I was hoping that when I, after I hit him and I ran back this way, here, then I started going back down here, and I looked him straight in the face when I, after I hit him, right here, against the back of his car. I pushed him up against it and I looked him straight in his face, and then, uh, I got scared inside. Afraid that somebody would saw me, so I took off running down here. I ran down this way, and I cut across behind this building construction, right here, I cut through here and I went across this street, right here. I cut through here, let's see, and down here, I cut right through here at these little hedges, I think they are, a garage. I cut through here and I went down here through that parking lot, right here behind that tree. I hid here and I went down to 17th. To 17th, then I went over one block on 17th, I went running this way, I'd be over to my left.

KPP: Um, what kind of cigarettes do you smoke?

JLC: Huh?

KPP: What kind of cigarettes do you smoke?

JLC: It varies.

KPP: Do you remember what, at all, what you were smoking?

JLC: I was smoking non filters. Smokin' non filters and Camels.

KPP: Camels? Did you, uh, were you smoking that night?

JLC: I smoked two cigarettes, sitting over here.

0000919

T. BED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 15

KPP: Okay. Do you know what you did with them?

JLC: I just put 'em out on the ground.

KPP: Did you smoke up a complete pack, or did

JLC: I smoked quite a few of 'em.

KPP: Okay.

RCM: What were you wearing that night?

JLC: I was wearing a green jacket, blue jeans, a pair of cowboy boots.

RCM: Where are those boots now?

JLC: I just sent 'em home. I sent 'em home to my girlfriend's house.

RCM: And, that's Cindy Hathaway?

JLC: Hathaway, staying with her grandma out at Brown Road.

RCM: Her grandmother

JLC: I don't know how things, () have gotten mailed out or not today, because I just packaged them up yesterday.

RCM: Do you, do you know what kind of a sole those boots have on them?

JLC: Yeah, they have a rubber sole.

RCM: Are they slick?

JLC: Uh hum.

RCM: No tread pattern on them? They're not like a vibrim sole or something like that?

0000920

T RIBED TAPED STATEMENT GHQ #8900672
MUI INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 16

JLC: Huh uh.

RCM: Okay.

KPP: Did you get any kind of, uh, change of clothes when you got home?

JLC: Yeah, I changed my clothes when I got home.

KPP: Where are your clothes that you wore that night?

JLC: The shirt is burnt and the pair of blue jeans, they're at home.

RCM: And, when you said home, do you mean at Cindy's?

JLC: Yeah.

KPP: Okay, when you, did you wash those jeans since then?

JLC: Yes I have. I've worn those jean since then.

KPP: Okay.

JLC: I can give you the pair of pants if you want 'em.

RCM: You say you had blood on your shirt and you burned that shirt?

JLC: Yes, I did, behind the Monterey that night.

RCM: How did you burn it?

JLC: I just lit a match to it.

KPP: Was there anybody with you?

JLC: No. I was by myself. It was pretty late at night. Two cruiser cars came through the parking lot that night and I hid.

T IBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 17

RCM: Came through which lot?

JLC: The Monterey.

RCM: Okay.

KPP: Were you wearing a hat?

JLC: Yes I was.

KPP: That night?

JLC: Yes.

RCM: What kind of a hat?

JLC: Just a baseball cap that said Jock on it. Red and white.

KPP: Did, did you have any problems while you were running? Did you kind of lose the hat, or

JLC: I had a hat in my back pocket that I picked up off the street, and that was it and I lost it somewhere in my running and I didn't care about it.

KPP: Did you have blood on your hands?

JLC: Yes I did.

KPP: Okay. What about your, uh, coat. What happened to the coat?

JLC: They, uh, took it. But, I didn't get no blood on my coat because I had my sleeve halfway pulled up. My shirt was down. I just had a little blood on my shirt and I had blood on my hands.

KPP: What did you do with your hands, to clean them?

JLC: I just used regular soap and water, washed it off.

KPP: You didn't worry about that until you got home?

E. R.-1001

1 LIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 18

JLC: No, nope.

RCM: The knife. Where did you get that knife?

JLC: Um, Witt Fish.

RCM: Witt Fish?

JLC: Yeah, he was staying with, I let him stay with me at the Monterey for a little while.

RCM: Okay, and he left the knife with you?

JLC: Yes.

RCM: And, the knife. Describe the knife for me.

JLC: The knife is a hunting knife, just a regular straight hunting knife. I don't know how you can describe it.

RCM: What's the handle look like?

JLC: It's a round handle. It's got some, uh, I don't know, what do you call it, what the top of it looked like. Just like a regular knife to me, hunting knife.

RCM: Okay. Did it have a leather sheath?

JLC: Yes, it did. The day that they came and took pictures in the room at Penny's at 3360 Camellia Drive South, they took the knife, took my jacket, took another knife, and they took a white jacket that belonged to, uh, uh, Nancy Smith. That's who I was staying with at the Monterey, room 116.

RCM: Okay.

KPP: Okay, now, you said that on that night that when you saw Mr. Francke come out and go toward his car, do you recall, uh, looking in the car previous to him coming out, or anything like that?

JLC: No, I didn't.

0000923

1 LIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 19

KPP: Do you recall him carrying anything when he was

JLC: A briefcase. He was carrying a briefcase. Yes, he was

KPP: Okay, and you're positive of that.

JLC: Positive.

KPP: Okay. And, do you recall what he did with that briefcase?

JLC: I can't, I think he put it in his car, cuz I didn't see it sitting beside the car or nothin'.

RCM: Okay.

KPP: Okay, John, when, after this was done, were you concerned that you maybe didn't

JLC: (unintelligible)

KPP: You didn't?

JLC: I didn't think I killed him then.

RCM: Okay. Were you concerned

JLC: I wasn't, I wasn't actually ... I was not after to kill the man. I just wanted to stab him so I could tell the guy I did what he asked. I just wanted to get the money so I could try to get on my feet and take care of my family.

KPP: Well, do you think that you would have gotten the money if he wasn't dead?

JLC: I had no, I wasn't concerned about it.

KPP: Okay. So, you had, did you have some reservations after he had talked to you, and he said he wanted you to get Francke, right?

JLC: Yeah. He didn't say that he wanted him dead and he didn't say he wanted him alive.

1. RIBED TAPED STATEMENT GHQ #8900672
MURKIN INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 20

KPP: What was your impression, though?

JLC: Just go do a good job on him and let him know that somebody was out after him.

KPP: Okay. It wasn't necessarily to kill him?

JLC: No, I didn't have no intention to kill him, but

KPP: Okay. Well, what do you think

JLC: All I thought, all I thought about, well I'd been in prison all my life, that if I got \$300,000 I could set myself up good enough and my family. That's all I cared about.

KPP: Okay.

JLC: And, I called my brother and I told my brother that I had been doin' a lot of drugs. And, he kept asking me why, and I wouldn't tell him.

RCM: Did you call him after the stabbing?

JLC: Not that night. I called him a few days afterwards.

RCM: Okay. Where did you call him from?

JLC: I called him a coup, the Monterey has a couple of phones that has a couple...they asked me about it, if I called Nebraska. I told them no. I can't remember the nights I called.

RCM: But, you did use the phone at the Monterey?

JLC: Yes, I did.

RCM: Okay.

JLC: And I have, uh, I have a phone bill and a box of stuff that I have at, uh, Cindy's grandmother's, that has a phone list of all the phone calls I made back home and Penny has some more other place. But, I took that phone list from Penny's.

E. R.-1004

1 RIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 21

KPP: Okay. So, you said that night you were wearing, uh, cowboy boots - what color were those cowboy boots?

JLC: Brown.

KPP: Brown? Okay. Do you have any other cowboy boots?

JLC: No, I don't.

KPP: Okay. Where would those cowboy boots be at, now?

JLC: If they're not at the pen, they're in the mail on the way to, uh, 2255 Brown Road.

KPP: Okay. And, you said you were wearing a pair of jeans.

JLC: Yes, I was.

KPP: And, where would those jeans be at, now?

JLC: 2255 Brown Road.

KPP: Okay. And, what, the shirt is gone?

JLC: Yes, it is.

KPP: Well, what color was that shirt?

JLC: It was a flannel shirt.

KPP: Okay, flannel shirt. And, what did you do with it?

JLC: I burned it.

KPP: Okay, and you burned it where?

JLC: Outsi, out in back by the trash cans at the Monterey Apartments.

0000926

LIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 22

KPP: Okay, why did you burn it?

JLC: Cuz I didn't, I didn't think I could wash the blood out of it.

KPP: Okay, had you tried?

JLC: I didn't even care about it, I just wanted to get rid of it.

KPP: Okay. What about, uh, the coat?

JLC: The coat - the State Police picked it up and sent it to the crime lab.

KPP: Okay. So, so we have the coat.

JLC: Yes you do.

KPP: And, we have the knife.

JLC: Yes.

KPP: Okay, and what about the baseball hat? You said

JLC: The baseball hat's at home.

KPP: The cap?

JLC: Yeah, the one I was wearing that night.

KPP: Okay.

JLC: But, I had another one in my pocket I dropped somewhere.

KPP: Okay, could you describe that cap to me that you wore, again?

JLC: The cap was red and white and had Jock on the front of it.

KPP: Okay, and that would be at home?

T RIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 23

JLC: Yes.

KPP: Where would that address be?

JLC: 2255 Brown Road.

KPP: Okay. And, that's all you remember wearing that night? Can you, would you find, or would you give us permission to examine those items, and, uh, seize them and, and uh, have our lab take a look at them?

JLC: Would I be able to go get them?

KPP: Well, I don't think we'll be able to get you out, out of the institution. What do you think?

JLC: Cuz I don't, I don't want nobody just goin' out there, cuz I don't want 'em knowin'.

KPP: Well, if we could get you to give us a permission card and it would be just me and, and Randy here.

JLC: No, cuz the lady that lives there is 76 years old.

KPP: Uh huh.

RCM: What if you'd call, if we made arrangements for you to call Cindy first?

JLC: I could ask her on the phone.

RCM: Yeah.

JLC: I don't know what I'm going to tell her, cuz I don't want her knowing.

RCM: You don't want her to know that you

JLC: Not right now, I don't.

KPP: Well, we won't say anything to her, either.

JLC: But, she does know that I was under the investigation for the murder of Michael Francke, one time.

0000928

INTERVIEWED: CROUSE, JOHNNY LEE
Page 24

RCM: She knows that you were questioned about it?

JLC: Yes.

RCM: Did you ever tell her why you were questioned about it?

JLC: I just told her I was, I was walking by that night it happened. That's all I told her.

RCM: Okay. Originally, you went to Stan Broom and you told him that you had observed something. Okay?

JLC: I told him that cuz I wanted to tell him more, and I was scared to.

RCM: Okay. Basically, the story that you gave the police to begin with was that you were walking by and you observed five Mexican individuals, uh, fighting with somebody, and that they ran off and got

JLC: And, I chased the guy, just to try to cover myself.

RCM: Okay. So, the basic reason that you told that story was why?

JLC: To try to get myself off.

RCM: Okay. To try to give yourself an excuse for being in the area?

JLC: Yeah.

RCM: Okay.

JLC: I can, I can call my girlfriend, Cindy, and ask her. She might be able to bring the stuff to you if you'd like.

KPP: Well, because of the nature of the case, it, to us the less people that handle those items the more, uh the better it would be, okay? And, that's why we would like to make some arrangements here, me and, between us, rather than having other

JLC: I gotta, I gotta ask her what she did with that bag that I put in the back of the car that I was going to take to the Goodwill, cuz I stuck the pants in there.

E. R.-1008

TRANSCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE
Page 25

KPP: Okay. Well, we can probably make arrangements for you to make a call and, and talk with her.

JLC: Yeah, I'll call her and talk to her about it.

KPP: Sure.

JLC: I'll just tell her that I'm, I'm getting questioned, they're questioning me again about this.

KPP: Or, tell her, uh, that you're just trying to clear some things up, uh, and a lot of times they'll understand that.

RCM: Is there anything that we haven't asked you, or anything that you want to tell us about this that maybe we haven't touched on?

KPP: Something that's bothering you that you'd like to, you know, tell us?

RCM: John, I want you to look at me for a minute, would you? John, did you kill Michael Francke?

JLC: Yes, I did.

RCM: Okay. I think that'll be the end of this tape. It's 12:15 on April 4, 1989.

LEGEND:

RCM: Randy Charles Martinak
KPP: Kenneth P. Pecyna, Detective
JLC: Johnny Lee Crouse

ct/04-04-89

MURDER Q #8900672
VICTIM: JAMES MICHAEL FRANCKE DOB 06-14-57
Page 3

ACTION TAKEN:
(Continued)

In writer's previous report, contact was made with the Lancaster County S.O. in Lincoln, Nebraska to request contact be made with John Crouse's brother, Larry Crouse, to John Crouse to determine if he would remember what was said by John Crouse in a call placed by him shortly after 01-17-89. John Crouse had advised he had called his brother a few days after killing James Michael Francke, and talked to his brother about killing a man. Refer to Det. Randy Martinak's reports regarding his contact with Lancaster County S. O. and their contact with Larry Crouse.

On 04-05-89, John Lee Crouse was returned to the Salem State Police patrol office at his request and was contacted at 9:50 AM. Present at this time were Correctional Officer King and Captain Forbes. Writer immediately advised Crouse that the police had made contact with Larry Crouse, his brother. Crouse advised spontaneously that he felt better after getting some sleep and having talked about what he had done. There was a period wherein John Crouse was not talked with, initially after he had talked of his feeling better. He apologized for not finishing writing the night before, and he started writing the hand printed letter, marked KPP-51. (Refer to attached photocopy of exhibit KPP-51 for details).

At 10:20 AM, date, writer advised John Crouse of his constitutional rights, which he stated he understood and signed. Previous to starting these Advice of Rights, Crouse advised writer that he understood his rights from yesterday and partially recited the rights until writer interrupted. It appeared to writer that he knows his constitutional rights almost verbatim. During a brief conversation with Crouse, he had admitted to both writer and Det. Martinak that he had stolen several vehicles from the Salem area. Details of these stolen vehicles and the information given, including follow up, are the subjects of a report by Detective Randy Martinak of the Attorney General's Office. (Refer to that report for complete details.)

At 10:40 AM, date, John Crouse requested that everyone else leave the room except the writer. At this time, he advised that he didn't like having an audience and felt uncomfortable about talking in front of everyone. He then described how he had stabbed Francke about five (5) times and didn't know all the areas, but he knows at least once in the heart, on a downward motion, and that he thinks maybe that he stabbed him in the right arm, and it was not just a slice as described in the day previous. Writer observed that Crouse appeared to have difficulty in discussing this, however, appeared somewhat relieved when this information was given to writer.

After this brief conversation, it was agreed to allow John Crouse a telephone call to his brother, Larry Crouse, who was standing by at the Lincoln County Sheriff's Office. Det. Hopper of the Lincoln County Sheriff's Office was present at the time that Larry Crouse was telephoned, in Nebraska. John Crouse agreed to having the conversation tape recorded. The telephone call also was at the request of John Crouse, as he wished to advise his brother, Larry, of what he had done regarding Michael Francke.

0000945

ACTION TAKEN:
(Continued).

At 10:53 AM, date, the tape recorder was turned on and Crouse was advised the tape recorder was on and asked if he had any objection to that, at which time he advised he did not. During the beginning of the telephone conversation, Crouse advised his brother, Larry Crouse, that the conversation was being recorded, to which the response by Larry Crouse was that he knew it was. John Crouse further asked Larry Crouse in this conversation if he remembered how he had told Larry Crouse that he had done it, and how Larry Crouse had asked him if did do it, and he admitted that he had. Further in the conversation, John Crouse admitted that at first when it started out it was just a freak accident, as he put it, and that it had further turned out to be more than he had intended it to be. John Crouse also indicated that he had been talking with detectives all day, the previous day, which would be 04-04-89, and that he referred to having problems in talking about specific points in the crime, which he referred to as "having to get over that black wall". Further on in the conversation, Crouse again discusses the crime and talks with his brother and how he had gotten into a car and then he (Francke) came out, and he was still in the car. Crouse advised that Francke then put his hand on him and asked him what he was doing. At this point, he basically panicked when Francke was going to make a call and that he did not want to go to jail. A fight then ensued, wherein he tried to knock him out so that he could run. John Crouse goes on to indicate the next thing he knew was he was stabbing the guy. He then indicated he stabbed him in the heart and the arm. He also indicated that he thought that he had got him in the stomach, also.

The taped telephone conversation was ended at 11:10 AM, at John Crouse's request. The telephone call went on a short time afterwards, and then was terminated. (Refer to attached transcript of the taped telephone call by John Crouse to Larry Crouse for complete details).

In the above mentioned hand printed letter, marked KPP-51, a different story is given by John Crouse. He basically advised in this hand printed letter that on 01-17-89 he indicated that when he was in a car, a lone man contacted and put a hand on him. This person indicated they were going to call someone and a fight was then started. At this point, Crouse indicated he obtained his knife and advised this person to "back off". Crouse indicated that he had his knife in his left hand and was trying to get this person off him with his right hand. Crouse further indicated, basically in this note, that when he determined he could not stop this person he then hit him with the knife. In this note, Crouse further indicated that after leaving the scene he returned to the Monterey Apartments at 633 Perry Street, noticed blood on his hands, and had put on some clean clothes and taken a shower. Writer was also given another handwritten note which was marked exhibit KPP-52. (Refer to attached photocopy for details.)

At 11:30 AM, date, at John Crouse's request, a telephone call was placed to Cyndi Hathaway which was not tape recorded. Captain Forbes remained present during this telephone conversation. After this telephone call, Captain Forbes did advise that he was re-confirmed that there was no information regarding the whereabouts of the subject.

JAC

0000948

MUR GHQ #8900672
VICTIM. JAMES MICHAEL FRANCKE DOB 06-14-57
Page 5

ACTION TAKEN: be mad if he said he did not do the crime. At this point, Crouse advised that he did do the crime,
(Continued) however, he was scared, further stating that he was afraid of the death penalty or life in prison.

Writer, at this time decided that it would be much better for John Crouse to return to the state penitentiary and he could be contacted later that day. John Crouse agreed to do so.

Writer completed a request for lab analysis report with which the exhibits, as listed on the attached crime lab report, were sent to the Crime Lab for examination for trace evidence. These exhibits would include items seized on the 4th of April, 1989, exhibits KPP-41, KPP-42, KPP-43, KPP-44, KPP-48, and KPP-49. Also, items returned to the Crime Lab which were seized on 02-15-89 by Detective Edward Mouery, EFM-1, EFM-2, EFM-3, and EFM-4. (Refer to attached Crime Lab evidence request for details of the exhibits forwarded.)

On 04-05-89 at 7:15 PM, John Lee Crouse was re-contacted at the Salem patrol office. John Crouse was immediately advised of his constitutional rights. Present at this time was Detective Randy Martinak. At this time, John Crouse read a hand written statement, which he later destroyed. However, he stated at this time as part of his statement that he had hit Michael Francke in the face and his upper chest. He further stated that Francke knocked him down and he came up, grabbing his knife, and stabbed him. John Crouse further stated that Francke was trying to block Crouse. He further stated that Francke said, "I won't die and you won't get away with this". At this point, John Crouse advised that he had run toward Park, after killing Francke. When he later returned to the Monterey Apartments, a subject named Grubb (later identified in another report) had asked him what was wrong. Crouse indicated at this point that he might be able to show more detail if he was at the scene.

At 7:35 PM, date, he agreed to accompany writer to the Dome Building area and view the scene, pointing out further details. Writer noted while seated in the car with Sergeant Karl Nelson that John Crouse became very quiet upon arriving closer to the scene. While at the scene, writer noted that Crouse started talking of how he ran up toward Park Street. This was the opposite direction in which he had earlier stated he ran. Writer further observed that it appeared Crouse was trying to lead officers away from the direct area of where the crime was known to have occurred. At this point, writer advised Crouse that he was not telling the truth and he became very angry. Crouse then stated he wanted to go back and turned away, and started to go to a different car wherein Captain Forbes had been seated. Det. Martinak at this point grabbed Crouse's shoulder and Crouse immediately became very hostile and squared off at Det. Martinak, in a fighting stance. Crouse was visibly very hostile and made threats toward Det. Martinak. John Crouse was then returned to the vehicle and returned back to the patrol office. On the way back to the Salem patrol office, in the presence of Sgt. Karl Nelson, he stated he didn't like having someone touch him like that and then said something like he didn't have a knife, but he would do with what he had.

0000947

MURDER . . . #8900672
VICTIM: JAMES MICHAEL FRANCKE DOB 06-14-57
Page 6

ACTION TAKEN:
(Continued)

While at the patrol office, Crouse indicated he did not wish to talk with Det. Martinak any further, as he did not like the way Det. Martinak had grabbed his shoulder. The writer explained to John Crouse that it appeared to writer that this had set him off and made him very angry, as it possibly had on the same night of January 17, 1989, when Michael Francke had touched him at Francke's vehicle. John Crouse agreed with writer and agreed to resume talking with Det. Martinak and the writer. At this point, also, Crouse agreed to give complete details indicating he wanted to get past the point he is having trouble with, referring to "the black wall".

At approximately 8:50 PM, date, a tape recorded interview was conducted. John Crouse was advised the conversation was being recorded and agreed to the taped interview. John Crouse was also asked if he understood the constitutional rights he was advised earlier, and stated that he did understand and was giving this statement of his own free will. At this point, Crouse indicated that on January 17, 1989, he walked up to the car and took a piece of wire and used it to unlock the locked door. He then advised that he was grabbed by a lone man and at that point turned "furious". At this point, he grabbed his knife, after being struck by this person. At this point, Crouse advises that he cannot remember exactly all the spots that he hit him. He did indicate, however, that he was going at his chest when he hit Crouse's arm, causing him to hit in his heart. When he pulled back, this person stated, "My God". Crouse then indicated he looked at him for a moment, then took off running down the driveway, indicating westbound, and looked back to see if anyone was chasing him. He further indicated he kept running until he got down to approximately 17th Street.

John Crouse further describes how he believes that he had stabbed Francke in the stomach and possibly cut his arms and hands, because he had been swinging at him and trying to stab him, trying to get him off from fighting him. At one point, John Crouse describes how he was almost knocked out when he was struck by Michael Francke. Crouse further indicated that at one point he decided that maybe if he had struck Francke in the chest, it would slow him down. He describes how he stabbed him in the heart from a downward position. He was using his left hand, keeping his right hand free for power in case he had to strike him. John Crouse goes on to describe how he remembers getting Francke in his hands and upper forearm area. He further describes how he had cut him on his right arm, but could not remember if he hit him up any further on his arms.

Crouse further indicated that he then fled westbound from the scene and returned to the Monterey Apartments. At the Monterey Apartments he indicated that he had blood on him. He had burned the shirt, and washed his boots and everything else off that he had been wearing. Crouse indicated that the knife he used to stab Michael Francke was one of the knives that Detective Tom Mason seized from him during the first contact he had regarding the Francke investigation. Crouse indicated he did not know that it was Michael Francke until the next morning. Crouse further indicated in the taped interview that he remembered Michael Francke possibly wearing glasses, but

0000948

MURDER HQ #8900672
VICTIM: JAMES MICHAEL FRANCKE DOB 06-14-57
Page 7

ACTION TAKEN: he was not sure if he hit a pair of glasses when he struck Michael Francke, but that it was
(Continued) puzzling him about the glasses.

John Crouse went on in the taped interview to indicate that he washed everything completely, including the sheath when he returned to the Monterey Apartments.

At 9:22 PM, the tape recorded interview was terminated. (Refer to attached transcription of that taped interview for complete details.) The tape of that interview was marked and placed into the State Police evidence, listed as exhibit KPP-54.

During the interview with John Crouse, he made marks on another large overview photograph which was marked exhibit KPP-53. In this photograph, he indicates the approximate area in which Michael Francke's vehicle that he broke into was parked. He further indicates the direction of travel in which he fled the scene, which was consistent with witness statements in this case.

It should be noted that writer observed John Crouse to give this last statement a lot smoother than previous statements he had given. It appeared that it was spontaneous and smoothly spoken. He had no hesitation in answering questions, as he did in earlier statements, which appear to be untruthful, either in part or in whole.

At 9:35 PM, at John Crouse's request, a telephone call was placed to his brother, Larry. Present during this telephone call was Detective Martinak. The telephone call was not recorded.

At 9:45 PM, Crouse was allowed to make a telephone call to his mother in Nebraska. Again, this telephone call was not recorded, however, writer made notes of at least John Crouse's side of the conversation. Those notes are as follows: "It wasn't you, mom. It was an accident that went bad. Was something. Couldn't live with in self. Remember, you sent me \$20. But, believe me, mom, it wasn't you. It was a freak accident. I'll have to live with it. I didn't know who it was, mom, that was Head of Corrections. It was an accident. I didn't mean to kill anybody. But, it happened and it's time to go on. Mom, there is not anything you can do. You stood by for 20 years and that is a lot more than other people get. I'm going to tell my girlfriend face to face. I asked Larry to send some photos. I wanted to call and tell you myself."

After completing the call to his mother, Crouse gave a statement to writer indicating that he had stayed at the Monterey Apartments for the night of 8/14/57. He stated that he had stayed in the Monterey Apartments for the night of 8/14/57. He stated that he had stayed in the Monterey Apartments for the night of 8/14/57.

After completing the call to his mother, Crouse gave a statement to writer indicating that he had stayed at the Monterey Apartments for the night of 8/14/57. He stated that he had stayed in the Monterey Apartments for the night of 8/14/57. He stated that he had stayed in the Monterey Apartments for the night of 8/14/57.

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MURDE. Q #8900672
VICTIM: JAMES MICHAEL FRANCKE DOB 06-14-57
Page 8

ACTION TAKEN: At 10:25 PM, contact was made by Cynthia Hathaway with John Crouse at the interview room of the
(Continued) Salem patrol office. Present at this time was the writer. Writer observed John Crouse ask Cynthia Hathaway to look him in the face and he then started crying and said he had killed Michael Francke, but that it was a freak accident. Writer observed Cyndi Hathaway to become very angry and said she wanted to leave and have nothing further to do with him. She did, however, stay and was observed to hug and kiss John Crouse. She appeared to be very confused and surprised.

At approximately 11:10 PM, John Crouse was returned to the Oregon State Penitentiary.
There is no further information on this report at this time.

CASE STATUS: Investigation continuing.

KPP:ct
04-18-89

GHQ #8900672 (FRANCKE)

EXHIBIT KPP-50

Recorded telephone call between John Crouse/Larry Crouse
04-05-89, 10:53 AM

KPP:

Okay, today's date is, uh, April 5, 1989. Time right now is uh, let's see, 10:53 AM, and this tape is on, and my name is Kenneth Pecyna, and I'm at the state police office in Salem. And, Investigator Hopper, could you identify yourself on the phone?

HR:

Yes, this is Investigator Hopper with the Sheriff's Office in Lancaster County, Nebraska.

HR:

Okay. And, okay, uh, John Crouse, this tape recorder is on. Do you mind the conversation being recorded?

HR:

No, I don't.

HR:

Okay, and I'll be turning the phone over to John Crouse to talk right now, and I'll go ahead and do that right now.

HR:

Okay.

HR:

Thanks.

HR:

Hello.

HR:

Hi, John.

HR:

Yes.

HR:

This is Investigator Hopper with the Sheriff's Office. I have Larry here.

HR:

Um huh.

HR:

Okay? I'll let you talk to Larry.

HR:

What're you doin'?

HR:

Nothin'.

HR:

What do you mean, nothin'?

HR:

Just this investigation.

HR:

I don't know.

HR:

Before, before I go any further, Larry, I want you to know that our conversation is being recorded.

HR:

I know it is, John.

HR:

Okay.

HR:

I knew that as soon as I, you know, they came out last night about 11:00 and talked to me. I come down here until about 1, 1:30 and we, explained everything to me and I still can't believe it, though.

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E. R.-1016

MURDER GHQ #8900672 (FRANCKE)

EXHIBIT KPP-50

Recorded telephone call between John Crouse/Larry Crouse

04-05-89, 10:53 AM

Page 2

JC: So, you know what's going on.

LC: Uh huh.

JC: Pretty much.

LC: Uh huh, pretty much.

JC: Tell me,

LC: Huh?

JC: You can tell me what, what you been told.

LC: They, they just told me that you killed someone, John.

JC: Did they tell you who?

LC: The supervisor of the penitentiary?

JC: Um huh. And, what was you asked?

LC: Advised them that you told me.

JC: Okay

LC: Hell, I remember the phone call, man, but I don't remember who that, that, you know, I took it in stride that there was, you know, you was just talkin' out of the head, you know.

JC: Do you remember the phone conversation?

LC: Not the whole thing, no man.

JC: All right.

LC: I remember, not the whole thing.

JC: Okay.

LC: I told them all I remembered, and that was it.

JC: You don't have to tell them anything that you don't want to.

LC: I know that.

JC: And, I told them, I told them that I did tell you,

LC: Um huh

JC: in a phone conversation. I can't remember the night that I called

LC: I don't either, John.

GHQ #B900672 (FRANCKE)

EXHIBIT KPP-50

telephone call between John Crouse/Larry Crouse

04-15-19, 10:53 AM

Page 3

for sure. That's when I called from Penny's house, I believe it was.

Yeah, it was midnight.

Well, huh?

It was midnight here, I 'member.

Okay. Ummm, I might have to get, uh, a copy of the phone bill

Yeah.

from Penny. (To KPP - can you have them do that?)

Yeah, he said that he was going to do that.

Well, that night I called him it'd had to have been from Penny's house.

Okay

Okay, I called him from a phone booth but when I admitted the crime to my brother, it was from Penny's house, so it'd be on the phone bill.

Okay, we'll

Okay. So, you remember the conversation?

Um huh.

To where I told you that I did

That you was goin' to

Huh?

That you wanted to.

Member, after I called you and I told you that I was investigated by the state police for murder?

Um huh, I remember that.

Okay, then I call, kept calling you?

Um huh.

and talking to you about it, and I, and one night you asked me if I did it and I told you yes, that I was gonna take off on the run?

GHQ #8900672 (FRANCKE)

EXHIBIT KPP-50

telephone call between John Crouse/Larry Crouse
10:53 AM

No.

I can't remember that phone call, what night that phone, where I called you from.

Yeah. They might need a copy of the phone bill?

Yeah.

I'm digging them up now. They asked me from here, too.

Okay.

So,

You ain't told mom, have you?

No.

Have you told any

Are you charged with it, Johnny, or not? They got you for that mother one or ()?

Yeah.

You didn't, though, did ya? I know you didn't, man.

Huh?

You didn't do it, did ya?

Yeah.

(pause) It hurts, man. I ain't gonna give up on you, though. You know what I mean?

Yeah.

Hell, I love the shit out of you, ya know? () have a chance together, brother.

It started out, it's just a freak accident. Uh, more went on than what I intended it to be.

Yeah?

Cuz, at first I wasn't too worried about it. Then, when it came out on the radio, then, uh, when I first came in I went to my PO and told my PO I knew something about it, cuz I wanted to talk about it. Then, I was callin' you, that

I wondered why you stopped callin'

MURDER GHQ #8900672 (FRANCKE)

EXHIBIT KPP-50

Recorded telephone call between John Crouse/Larry Crouse

04-05-89, 10:53 AM

Page 5

JC: Huh?

LC: I said I wondered why you stopped callin'.

JC: But, I was here all day yesterday, and the only thing I gotta get over now is that black wall, but I don't want to remember.

LC: Yeah.

JC: But, as soon as I do that, I'm all right.

LC: Okay.

JC: I know what I'm lookin' at.

LC: Your life?

JC: Huh?

LC: What're you lookin' at?

JC: Probably death penalty. And, once they get ahold of the D.A., they'll probably ship me out of the state for awhile.

LC: Ship you out of the state?

JC: Yeah. I don't know where they'll send me.

LC: Well,

JC: I don't know how long it's gonna take me, but I'm hopin' I can get over it today.

LC: Well, it took me all night to understand what happened.

JC: Talked to anybody about it?

LC: Oh, the detectives. You know, they've been real nice. They came out and explained it to me, and, and I talked to them a little bit, and, that's about it, you know. And then they said, well would you like to talk to John and I said sure so they had me come down today and then got me the phone call to you, so, they're really nice.

JC: They're treating me pretty good here. They got, they got. They have me in a room over at the pen, by myself.

LC: Do they?

JC: Yeah. Well, I, I ain't got no contacts with nobody.

LC: Uh huh.

JC: Right.

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GHQ #8900672 (FRANCKE)

EXHIBIT KPP-50

Revised telephone call between John Crouse/Larry Crouse
08-08-89, 10:53 AM

100 What'd they do, come down and get you today for this phone
call?

101 Yeah.

102 Did they?

103 I, I was over here, cuz I want to try to finish it up.

104 Yeah.

105 And, I just have that one problem of gettin' over, of me
remembering stabbing him.

106 Yeah

107 and everything. Cuz, see, only the guy that did the crime
knows what happened.

108 Yeah, I know that.

109 Right, nobody else knows. My name ain't been in the paper or
nothin'.

110 Well, when I get off the phone, here, I'm going to have to go
explain this to mom.

111 Don't.

112 I have to.

113 Let it be for awhile.

114 I can't. You know what I mean? Can't let it go, God, this
hurts. ()

115 Is Loretta at work?

116 Yeah. I told her. Couldn't believe it. I talked to Karen
() already. She ().

117 What'd they say?

118 They couldn't believe it, either. No, we all thought you was
doin' good, bro. Thought you was going to come home. You know
what I mean?

119 Yeah.

120 () going on a long vacation again, and I gotta see
you behind the wall, huh?

121 I don't know if I want it

MURDER GHQ #8900672 (FRANCKE)

EXHIBIT KPP-50

Recorded telephone call between John Crouse/Larry Crouse

04-05-89, 10:53 AM

Page 7

LC: Well, that's up to you, you know. If you don't want to see me when I come up that way. You just keep in touch with me and let me know what's goin' down.

JC: I don't know if I can face you.

LC: I hear ya. But, you know, you gotta let me know what's going on. Don't let me have phone call and make me wait, you know, cuz, I want to know what's happenin'.

JC: You will.

LC: You know, want to know what's happenin' when it happens, not weeks later. You know what I mean?

JC: I need to try to get some money together, cuz I ain't got no money.

LC: We might be able to help you out a little bit. I got a little bit saved. You know?

JC: But I can't, I was trying to remember the night I called and told you that you asked me if I committed it, and I told you yeah?

LC: Yeah? You see, I don't remember that part.

JC: Cuz, that's that, that's that night I told you I wouldn't be callin' no more?

LC: Yeah, then you called me back later that night, though.

JC: I think I called you from the motel.

LC: Yeah. Uh huh.

JC: when I was stayin' at the motel.

LC: Uh huh

JC: I don't, I can't 'member if I called collect.

LC: I think you called me direct, or was it collect?

JC: I can't remember.

LC: I think it was direct that night, bro.

JC: Yeah.

LC: Think you called me direct.

LC: Okay. But,

0000957

MURDER GHQ #8900672 (FRANCKE)
Recorded telephone call between John Crouse/Larry Crouse
04-05-89, 10:53 AM
Page 8

EXHIBIT KPP-50

LC: But, I remember, a little bit after 12

JC: Umm, how, how it started was, I got in this car, okay? I was goin' from my PO's and I got in this car. When he came out, I was still in his car. He put his hand on me and asked me and asked me what I was doin'. I had a knife on my side. I didn't think about it and he says you come along with me. He's gonna go call, make a phone call, so I thought he was gonna call the cops, and I told myself that I'm not going back to jail.

LC: Yeah?

JC: Okay. So, I tried to get away from him, I said let's talk about it because I was just gonna try to run from him and take off. But, it did happen that way, and we got in a fight. Then, umm, I just tried to hit him where I could knock him out so I could run.

LC: Um huh.

JC: Then, uh, the next thing I know, I was stabbing the guy. I stabbed him in the heart, and the arm. I think I got him in the stomach a time or two.

LC: I don't () 'd ever do anything like that, bro.

JC: Huh?

LC: I just never ever thought you'd do anything like that.

JC: I didn't, either.

LC: But, you were scared, huh?

JC: Yeah. I didn, I didn't intend to kill the guy.

LC: Anything they can do about with him fightin' back with you or anything like that?

JC: They can't.

LC: They can't?

JC: No.

LC: There were no witnesses or nothin' to say that he hit you first or anything?

JC: They have witnesses, but they can't tell me nothin'.

LC: Oh, they can't?

JC: No. No. They has to get the full statement from me. Like I

MURDER GHQ #8900672 (FRANCKE)

EXHIBIT KPP-50

Recorded telephone call between John Crouse/Larry Crouse.

04-05-89, 10:53 AM

Page 9

said, the person who did it, he's the only one that knows actually what happened.

LC: () when's your trial date, or anything like that?

JC: I don't know.

LC: You don't know? Well, if they need to, you have them get in touch with this, uh, Investigator Hopper. He knows how to get ahold of me.

JC: I'm gonna try, uh, I'm gonna try to get a call to you later

LC: Well, just let 'em, you know, like I said if they have to, have them get ahold of this Investigator Hopper, and

JC: You gonna

LC: get in touch with me, and

JC: You gonna be home tonight?

LC: Yeah.

JC: Okay.

LC: Or, you can call me at home.

JC: I haven't, I haven't told my girlfriend.

LC: You haven't?

JC: No. I'm not ready to.

LC: Yeah.

JC: But, she's asking a lot of questions and I might have to pretty quick.

LC: Yeah, like she might wanta know.

JC: I'm just scared.

LC: Umm, I hear you, John. I'm scared for you, too. I hope they don't give you the death penalty, but, they say you do that fuckin' crime, you gotta serve that damn time.

JC: Yeah

LC: That right?

JC: Yeah. I've served for everything I've ever did.

LC: I know, bro. I know it's been twenty years,

MURDER GHQ #8900672 (FRANCKE)
Recorded telephone call between John Crouse/Larry Crouse
04-05-89, 10:53 AM
Page 10

EXHIBIT KPP-50

JC: Yeah,
LC: It's been twenty years. That right?
JC: Yeah. Well, I want to talk to you for a few minutes. I'm gonna ask this guy, uh, - how do you pronounce your name?
KPP: Pecyna, Ken.
JC: Ken Pecyna, to turn off the, the tape recorder now, okay?
LC: Okay.
JC: Then, I have to talk to you for a few minutes. The time is,
KPP: Ten minutes after
JC: Ten minutes after eleven, and the conversation between Larry Crouse and John, Johnny Lee Crouse.

(End of tape)

KPP: Kenneth Pecyna, Detective, Oregon State Police
IH: Investigator Hopper, Lancaster County Sheriff's Office,
Nebraska
JC: Johnny Lee Crouse
LC: Larry Crouse.

ct/04-06-89

60000

ON 1-17-97. D-02

KPP-51

I was walking FROM my P.O. office
STHW GROOM, AS I was going Down Center St
TO GO BACK TO 633 FERRY ST, I got out
of my P.O. about 6:10 PM, I think AS I stop
TO DO some THINGS, I was looking in ~~at~~ a
CAR at The Time AS I was in The car A long
MAN come up TO me and ask me what I
was Doing and Then he put a hand on me
and said come with me I DID know The
MAN when I look AT him and Told him That
That we could work it out, and he Told
me That he was going to make A phone
call so as we was walking I Told my
SELF I was not going to jail so I got in
~~to~~ A Fight with him as he hit me I got my
knife out and Told him to BACK off. of me.
and Then he Told me That he was not worry
about it so I TRYed TO Run FROM him Then
he jump on and I had The knife in my
hand. it was in my left hand I TRY TO
get him off me, with my Right hand.
and I got BACK up and hit him TRYing
TO put him out, and and when I could
NOT DO it so I hit him with The knife
in The heart and Then I when went
at him again and when I got him in
The heart he said what are you Doing
he got up and was TRYing TO get BACK
TO The door AND I went at him again
as I DID I Told him That he was not
going TO call anyone and he was looking
at me and he said you will not get away.
with This I said I'm not going TO
TO WORRY about it, at ALL and I Took
of I GO BACK TO 633 FERRY st, I was
going BACK and I got a cig. out TO have.
A smoke and I ~~see~~ look AT The ~~Back~~ Blood
on my hand, so when I got BACK

0000962

E. R.-1026

(2)
TO my apt # 301 Because I work at Night
I put some new clothes I took a shower
to get the blood off of me. So no one
would think of anything or ask me if.
I was in a fight so I went to some
one I could get some drugs from, and I
went back to the office to be by my
self, to try to forget what I have
done that night so I just sit there

0000963

KP-52
4-5-89

2605 State Street
Salem, Oregon 97310

I Jimmy Lee Carver is writing this in my own words about what I did on 1-17-89 I went to see my pa Stan Brown, at 3240 Center st NE, I got out of his office about 6:10 pm 1-17-89 and when I go down there I was not in a good mood, as I was walking down Center St, I was on Drugs Drugs all that day and I told myself that I was sick of ~~being~~ ^{being} told to, what to do every day that I did yrs at osp and I was not going back for any thing

I told Mike-F That he will do just do what I told him to or that he will not see his family that it was his life. That I did not care how the out come of this will be my way that I told him that he will go in and get everything on me that they have, and he told me that there was no way that I would not do any thing to him at that time I told him I had a knife and that if think that I'm playing just try me, and we will see and then he hit me and tried to run I got up and went at him with the knife in my hand and I put him in the arm, with the knife I hit him in the stomach there I stabbed him about about 3 more time before I stabbed Mike-F in the back, at dawn, way.

0000964

TRANSCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57

EXHIBIT KPP-

KPP: Okay, today's date is April 5, 1989. Uh, this is the Oregon State Police Patrol office, and present in this interview is going to be Randy Martinak with the Attorney General's office and me, Kenneth Pecyna, with the Oregon State Police, and John Crouse, John Lee Crouse. (Estimated time: 8:50 PM). John, could you state your full name, after I let you know that this conversation is being recorded. Do you understand that?

JC: Yes.

KPP: Okay, and go ahead and state your full name and date of birth and then I'll do a little explaining further before we go on.

JC: Johnny Lee Crouse, last name is spelled C R O U S E, date of birth: 06-14-57.

KPP: Okay. Now, earlier I advised you of your rights. Uh, do you understand all those, uh, rights that we gave you?

JC: Yes, I do.

KPP: Okay. Do you have any questions about your constitutional rights that I gave you?

JC: No, I don't.

KPP: Okay. And, you're making this statement of your own free will?

JC: Yes, I am.

KPP: Okay. Uh, why don't you go ahead and, and explain everything, okay, that you can, in your own words.

JC: Uh, the night of the 17th, I was in the car. I walked by a car and seen some stuff in the car. I didn't know whose car it was. I took a piece of wire and I got into it, to takin' it up to the lock. I unlocked it and I was in it. I was only in it a few moments. And then, a lone man grabbed me and said come with me, and as I come up out of the car I was scared up out of the car I was scared, and I turned furious against him. He said come along with me, then I just furious. And, I told myself I wasn't goin' nowhere. Then, I tried to jerk away from him, and then he hit me, then I told myself that I had to do something quick. So, I

0000965

TR RIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 2

EXHIBIT KPP-54

grabbed for my knife and I was stabbing at him. I can't say where exactly I hit him at at all times. Then, I hit him. I was goin' at him for his chest, and he hit my arm, and I hit him in his heart and when I pulled back he said, "My God", and I looked at him for a moment, then I took off running through, down through the driveway. And, I got over and I looked back to see if anybody was chasing me. And, I put my knife back in my sheath and just kept on running 'til I got down to 17th.

KPP: Okay. John, could you explain, uh, a little more about where you remember you had, uh, stabbed Michael Francke?

JC: I stabbed Michael Francke, I believe I got him in the stomach and I think I cut him on his arms and his hands, because when I was swinging at him and trying to stab him I was just interfering, trying to get him off me cuz he was trying to fight me. Then, I was trying to figure out a way that I could out-muscle him cuz I was having a hard time with it, and, uh, I thought at one point that he would have had me, which he almost did when he hit me the first time. He almost knocked me out. And, I realized then that I wasn't dealing with just some punk. And then, I just took wild stabs at him and then, it's like none of it slowed him down and he kept coming, and then I said maybe if I, I told myself if I hit him in the chest that he'll slow down then I could do more or just try to get away. Then, finally when I went for his chest he hit my arm when I, as I was coming at him with the knife, and I hit in his heart.

KPP: At what position were you coming at him?

JC: At a down position.

KPP: Okay, and which hand were you using?

JC: I was using my left hand, cuz I kept my right hand free for the power, in case I had to hit him.

KPP: Okay. And, do you recall...uh, try and remember where you had hit him with the knife. You said that the chest and the stomach, and you said maybe the arm

JC: The arm. I hit him in the arm. I can't say whether it was above or below the arm.

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TRANSCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 3

EXHIBIT KPP-54

times, but I remember I did hit him in the arms. I took a couple of slashes at him.

KPP: Okay, do you know if it was...uh, you said that

JC: I got him on the hands and I got him on the arm.

KPP: Okay, where at on the arms?

JC: The upper forearm

KPP: Okay

JC: Right arm.

KPP: It was on the forearms, though?

JC: Yeah, betw, between the elbow...I can't remember if I hit him up any farther.

KPP: Okay. Well, was it a slice or was it a, a stab, or was it a

JC: It was just what I could slice when I was bringing the knife around him then, because he kept his hands up to try to get to me, like he wanted to try to grab for, for me, to tone me down, just tried to grab for the hand that might () the knife in it.

KPP: Okay.

JC: Okay. He got, he grabbed ahold of my hand at one time, and I jerked my hand back and I dropped the knife and I picked it, hurried up and I leaned over and he hit me in the back of the head, and it didn't phase me much cuz I was already in a fury and I didn't care, and I just told myself I gotta stop this guy, I gotta get him off of me to get away. Okay? So, the rest just took place.

RM: Okay. Now, you went, you ran you said away to the west, across back through the hospital, down around some apartments and over to 17th?

0000967

TRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 4

EXHIBIT KPP-54

JC: Uh huh, then I cut over a block after I got on 17th, at the light if you was going, the way I'm settin', the, uh, Dome Building'd be on my right and the CTP program would be on my left. So, when I got to 17th, I turned to my left.

RM: Okay.

JC: Okay. I went down one block, then I turned to the right to go straight down, and then when I got to the Monterey Apartments I had blood on me, on my shirt. I burned the shirt and I threw the knife, I washed my boots and everything off, and then I just burnt the shirt in the back. And then, on my first investigation when I told Stan I knew something about it, uh, Officer Mason took a knife, a couple of knives from me, one of the knives that was used to stab Michael Francke.

KPP: One of those knives that, that we have from you is the knife?

JC: Yeah, yeah. Umm

RM: And, you got that knife where?

JC: From, uh, Witt Fish.

RM: Whitney Fish?

JC: Yeah.

RM: Okay.

JC: I got that knife from him. And, uh, I just washed the knife off and I just took it back upstairs and I just left it there. And then when Officer Mason, uh, Detective Mason, is that his name?

KPP: Yeah.

JC: came up to Penny's house where I was living at the time that he was investigating me, he took a green jacket from me, a white jacket, took some photographs, and at that time they wasn't, they didn't see the knives and the knives were laying on top of the dresser. Just laid out in the open. And, then I told myself, well

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TRAN: TUBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 5

EXHIBIT KPP-54

they ain't gonna get the knife. Then, a few minutes later they said, this other guy that was taking the pictures, he said, "Well, what about these knives?" Then, I tried, then I, I didn't say nothing after that. But, when I, when I first got in my scuffle with Michael Francke, I didn't know who he was or anything. I didn't know it was actually Michael Francke 'til the next morning. But, the person I fought that night, I wasn't out to kill.

KPP: Okay, now you described earlier when we talked to you about some clothing that he wore, what did you call that?

JC: He had a, he had a, a jacket on, and sort of a, not a real dark jacket. He just had some slacks on. I don't know what kind of shoes, I wasn't paying no attention.

KPP: What color was the jacket?

JC: Uh, it wasn't a dark, it wasn't real dark and it wasn't a light coat. Cuz, I wasn't paying too much attention to it at the time.

KPP: Okay. Do you recall what kind of shirt he was wearing?

JC: No, I can't. I can't.

KPP: Okay. Uh, could you describe the coat a little bit to us?

JC: It was, uh, kind of like a, a suit jacket. It didn't, it didn't fit him real tight, and it wasn't, wasn't real loose on him neither, just

KPP: Do you remember anything about the collar, you said

JC: Short collar. He didn't have a big collar on it. It was a short-collar jacket. That, I can remember the jacket, cuz I really wasn't...at the time all this was taking place, I wasn't worried about what he had on, I was more worried about getting away from that man than anything. Cuz, I knew if I couldn't do something within just a few moments, he had me.

RM: And, what do you think he was gonna do with you?

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E. R.-1033

ANSWERED TAPED STATEMENT GHQ #8900672
SRDB INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEW: CROUSE, JOHNNY LEE DOB 06-14-57
Page 6

EXHIBIT KPP-54

JC: Huh, I got scared.

RM: When he, when he caught you at the car, and he said, uh, you're coming with me, did he say anything else about where he was going to take you?

JC: No, he didn't say where he was taking me or anything. He said come with me, and when he grabbed me, I just automatic turned fury, and I, I didn't let the fury, the whole fury didn't take effect of me when he first grabbed ahold of me. And when he came, when, cuz when he first grabbed ahold of me he says, "What do you think you're doing?" And when I got out of the car, he grabbed a, I mean a grip on me. And, I automatic just turned fury. All right. I took a swing at him, he swung at me. All right. And, I hit, I connected with him. When I did hit him, and it was just like it didn't even phase the man.

RM: Where did you hit him?

JC: I hit him in his face. I hit him in his face, then he hit me and I almost went out, and I told myself I have to do something with this guy and I gotta do it quick.

RM: You described the guy you fought with that night. How big was he?

JC: The guy was about six, six one to six foot three, probably a hundred and, between a hundred and seventy to a hundred and ninety pounds, two hundred pounds, good build, uh, not a big build but not a small, medium build, more than medium build. Uh, to me he was cock strong.

RM: Okay. You said something about

JC: He had glasses on. I believe he had glasses, some kind of glasses. That's the part I can't be sure about, cuz when I turned and hit him, I can't say if I hit a pair of glasses or not. That's one part that I'm not, I can't say for sure about. And, I'm still not sure about it. That's the part, that's one of the biggest parts of this that's puzzling me. Did he have glasses, or did he not have glasses?

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E. R.-1034

TR_A IBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 7

EXHIBIT KPP-54

RM: Okay. You, you said when you got back the Monterey there were people there that you talked to.

JC: Yes, I talked. When I first got to the Monterey, I washed up. I was living in apartment 206 at the time. Um,

KPP: Let's go into what you washed up, what you did.

JC: What I did, I went in, I took all my clothes off, when I fuckin', when I opened my door, I reached in my pocket and I took my door key out, I opened my door and I realized I had blood on me at that time. And, I, ..cuz I wasn't worried about blood on me or nothing at the scene when I took off running. I wanted to get away, and when I looked back, I looked back just for a brief moment to see if somebody was behind me, chasing me. Okay? I didn't pay any attention to my hands or nothing. When I got to the Monterey and I looked down and I had blood on my hands, I had blood on my shirt, and I took the knife out and I had blood on my knife. So, I had, just threw my knife in my little sink and turned the water on.

KPP: You cleaned the knife.

JC: I cleaned the knife. I took my shirt off and I set it on some newspaper, right there in my apartment. I went in and I took a complete shower. I washed my boots off, took my pants off, I set them in a corner in a bag, left them there. Because when I got done with my shower I examined my pants, and I just ha, I had a little blood on the side of my pants. I figured I could just wash that out, so I put 'em in a bucket of cold water. Then, the shirt wasn't much to me, so I took the shirt that had blood on it out to the back, the back alley way where all the tenants dumped their trash, and I just put the paper and the shirt all together and I just lit a match to it and I sit there til it burned away. Then, I picked it up, scraped, swept everything all up and I put it in the trash can and put other garbage over the top of it.

KPP: Okay.

JC: So, when I got all that done, I went to the office for a few seconds. Then, I went upstairs to a guy that was dealing in drugs and I said

0000971

TRAN IBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 8

EXHIBIT KPP-54

KPP: You don't remember his name?

JC: Juan is how I know him. And, he was in a drug raid over there when they had a drug raid over there. And I says I need some, I need a fix. And, he says "How much?" I said, 20 cents worth, that's \$20, and he said what do you want, you want zip, you want some cocaine, you want some heroin? I said just give me some cocaine. I said that'll do me just fine. And so, I was, as I was coming down I seen a friend.

KPP: Who's the friend?

JC: Grubb is the guy's name. I don't know the guy's real name, I just knew him by Grubb. And, he says, he says, "Are you all right?" I said, "Yeah, I'm all right". And, another guy that I knew that was out there, he says, "What's wrong, John?" He said, "You go do a robbery or something?" He says, "You look a", he says, "You're pure white". I said, "Oh, it's nothin' man, I'm all right". And me and Grubb went down, in, into the office cuz I was the night manager at the Monterey Apartments on three, 633 Ferry Street. We went downstairs and I got two syringes out and we did a fix, then I went upstairs. Then, I was sitting there, I was shaking and Grubb kept saying, "You all right, you all right?" I said, "It ain't nothin' man, I'll be all right, I'll be all right". And then, uh, the next morning when they, the, Debbie Hollopeter came in, and she looked at me and she says, "Are you okay, John?" I said, "Yeah, I'm okay." And she said, "What're you been crying about?" I said, "Nothin'" I said, "I got some bad news from home". I said, "That's all". Then, uh, Floyd Bunn came in and said, "Why, you look like shit, why don't you take the day off?" So, I said, "No, I'm okay, I'll help you get some work done." Then, Floyd took me in the back room and he said, "John, what happened?" and I said, "Nothin', Floyd." I said, "I'm okay". And he asked me what kind of night it was and all that, and so I went up to my apartment and I got

KPP: Did you tell him?

Yes?

Did you tell him?

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E. R.-1036

TRANSCRIBED TAPED STATEMENT GHQ #8900672
MURKIN INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 9

EXHIBIT KPP-54

0102

JC: No, I didn't tell him. I just told him everything was okay. And, um, he said, "If you need to talk to me, you know where I'm at". I said, "No, I'll make it over it. I'll be okay". So, I went upstairs, I got some clothes together and I went to the laundrymat and I washed my clothes. Then,

KPP: Which clothes did you wash?

JC: I washed a pair of blue jeans, that I gave you guys yesterday, and I washed just some other work clothes I had and a couple of pair of dress pants. So, I got back home after I did my laundry. I went down to the office and I asked Debbie if she'd loan me some money and, she said she didn't have it at the time. So then I asked, um, um Floyd Bunn. I said, "Do you have a few dollars I could borrow?" I said, "I need to go get some stuff from the store." Floyd gave me a few dollars. So I told him, I said thanks, and uh, he says, "Are you going to work tonight?" I said, "I'll be here, I've been here every night". And then, uh, I goofed off that day. I went back up to Juan again and I had Juan front me some dope.

KPP: This was all the same day, yet?

JC: Yeah that evening, or that evening. And, uh, I, I did this the night of the 17th. All right. I went and got a fix from Juan that night.

KPP: Do you remember what time that this happened?

JC: I got another fix from, I was at Juan's place about, pretty close to 10:30, 11:00 was when I got to Juan's.

KPP: When did this occur at the Dome Building?

JC: I had, I can't put a precise time that it happened. It happen, it happened between si, uh, 6:30 and 7:30, right around in that, I don't, I don't want to say a specific time, cuz I can't. Between 6:30 and 7:30, right in that area, more like between, take a little time from it, not much, but maybe a little. You

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E. R.-1037

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TR. UNRECORDED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 10

EXHIBIT KPP-54

JC: Yes, I did, Stan. Cuz I left Stan Groom's office at 6:10.

KPP: Well, how long after that did this occur?

JC: Maybe 25 - 30 minutes afterwards, maybe a little less.

RM: Where did you, where did you stop between Stan's office and the Dome Building?

JC: I made a call to my brother. I call, I did make the call to my brother.

RM: Okay.

JC: I did make that call to my brother, and that was only a brief phone call.

RM: Okay. Did you look in any other cars before you looked in that one?

JC: No. This was the first car I went to, and I seen stuff in it, and that's what I went for.

RM: And, you say you opened the door with a wire.

JC: With a wire. The wire's in a box, white box with some, ah, wire, regular wire wire, out at Penny Fox's at 3360 Camellia Drive S.

RM: What else is in that box?

JC: There's, uh, two sets of car keys that belong to two cars that I stole.

RM: Okay.

JC: One from downtown Salem and the other one from De Lons.

RM: So, do you, do you have any idea what time it was when you, after you ran away from there? Do you have any idea what time it was when you arrived back at the Monterey?

JC: I wasn't paying any attention to it, I was, I was at the Monterey at 8:00, 8:

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E. R.-1038

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TR. RIBED TAPED STATEMENT GHQ #8900672
MURKIN INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 11

EXHIBIT KPP-54

8:15, cuz I remember looking up at the clock and I signed a piece of paper that said, and I put 8:15. Cuz, I sorta kept a little log of myself and when I did my rounds, and I just marked 8:15, cuz they left at 5:00 and that's usually what time I started my

KPP: Did you look at a clock when you wrote that time down, or did you just write it down?

JC: I glanced up at a clock and it said about 8:15.

KPP: Okay. But, you did sign something down there?

JC: Yes I did, yes I did.

KPP: Why do you sign that?

JC: I just sign it for my own record, so I can show them.

KPP: Show who?

JC: Floyd.

KPP: He's supposed to monitor your times?

JC: No, he don't monitor my time, I wrote it down because of incidents that happen over there, I wrote it down all the time for him so I could give it to him the next morning. And I'd write down when I took a walk around the building, I'd write it down. Like I didn't have nothing marked on the piece of paper before 8:15, nothing.

KPP: Does he

JC: I wasn't getting paid by the hour, but I help, I always helped Floyd Bunn straighten out the Monterey Apartments at the time. And I was not, at that time, at the time that just took place, I wasn't out to hurt anybody. I was short on cash. I was looking in his car, maybe thinking if I could find something I could go to hawk and get a little extra cash for myself cuz, I was mixed up in drugs at

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E. R.-1039

TR. RIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 12

EXHIBIT KPP-54

0105

the time.

RM: Okay, not too long after that, you moved from the Monterey.

JC: Yes, I moved from the Monterey January 31st to Penny Fox's.

RM: Okay. And, at some time after you moved in with Penny Fox, you, you're still seeing your probation officer, or parole officer.

JC: Yes, yes.

RM: And, how often do you see your parole officer?

JC: I was seeing Stan Groom twice a week, and if I could get away with it, only once a week.

RM: Yeah, and that was usually on what days?

JC: Tuesdays and Thursdays.

RM: Okay. So, eventually you went and saw him and you told him a story about seeing something

JC: I knew what happened at, uh, Michael Francke's uh, case. And, he asked me if I'd talk to anybody and I told him yeah. So, I came down here and gave two officers just a line of bullshit.

RM: What did you tell them?

JC: I told them that I seen five Mexicans, four jumped in the car and another one took off running, and I chased a guy three miles or so. And, I figured okay, they won't come and talk to me no more.

RM: Why did you tell them that story?

JC: I don't know. I wanted to, at the time I told Stan I knew something about it, I wanted to talk to Stan, cuz I was scared myself. I was scared the next one, the

0000976

TR: RIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 13

EXHIBIT KPP-54

next morning because I was in the office when they, when it came on the news that Michael Francke was stabbed, was dead. And, at that time I looked Debbie Hollopeter right in the face. And, I know my face was pure white.

RM: Okay. So you, so you told him that story basically because he knew you'd been out in that area about that time?

JC: Yes, yes.

RM: Okay.

JC: And, and I wanted to tell it, I wanted to get it out, cuz I was scared for myself, and I wanted to come forward and talk about it. I didn't know how. And then, I got back to the pen on violation, on a Assault IV and then the next thing I know they brought me back over here and I talked to you two. The first day, I just gave you a line of shit. I wanted to talk about it, but I was scared.

KPP: Why were you scared?

JC: I didn't want to really face the reality of it. Then, I came back this evening, the 5th, and I went back out there, and it's just that I, it all flashed in front of me, and then, uh, this is it.

RM: So, your first knowledge that it was in fact Michael Francke that you had stabbed out there was when, when you first knew it?

JC: The next day on the radio.

RM: Okay. Did you ever go back out to the scene?

JC: No. I just took off. When I took off running, I ran for good. I didn't have no intentions of coming back to see who it was. I didn't know that it was Michael Francke 'til the next morning.

KPP: Now about the radio report...

I never... I never... I never... I never... I never... I never... I never... I never... I never... I never...

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TE RIBED TAPED STATEMENT GHQ #8900672
MURKIN INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 14

EXHIBIT KPP-54

one time. Then, when the officers took me back out there, Mason, Mason took me out there, I was scared to death, cuz I looked right there and it just like, it was right there in front of my face. And, they was trying to watch me and I kept turning and walking, real fast, saying well let's go over here so they wouldn't see my reactions.

RM: Okay, and that was when you were telling them about the guy running around behind the building and

JC: Yeah, yeah. And, I was talking ninety miles a minute. Then, I went back out there tonight and I got real quiet, and it's just like I seen myself with that guy in front of me, and you grabbed my arm and I just went fury. And, it was just like, I was scared of being there, that's just a bad place for me to be.

KPP: Um, what I wanted to ask you, again, was when you cleaned your clothes, do you remember, uh, pretty much what you cleaned?

JC: I washed a pair of blue jean, I washed, I just, I uh, it was a cotton shirt, and I washed my, I washed that jacket they took in cuz I won't put on another bright jacket tonight, I

KPP: You did wash the jacket?

JC: I did wash my jacket, cuz I washed everything I had on except for the shirt and I burnt the shirt, cuz the shirt wasn't that important to me cuz I had plenty other shirts.

KPP: Um, did you, uh. You say you washed your knife?

JC: Yes. I washed the sheath and everything.

KPP: Okay, how did you wash it?

2019-08-12 10:00:00 AM
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2019-08-12 10:00:00 AM

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E. R.-1042

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TF TRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 15

EXHIBIT KPP-54

KPP: You scrubbed it?

JC: I scrubbed it with a toothbrush. Then, after, I figure well...

KPP: Do you still have your toothbrush?

JC: No, I don't, I don't.

RM: You said the wire that you used to get in to

JC: Michael Francke, ... to this car, this individual's car, is in the box with some car keys I kept from a couple cars that I took, stole from here in Salem, is out at Penny's in a box.

RM: So, so you had been in the car. You got the car open, and you, and it was open long enough that you put the wire back in your pocket?

JC: Yeah. I put the wire back in my pocket, it's just one of the first things I do. Once I get it unlocked, I pulled it out and I just wrapped it around my hand and I stuck it in my pocket.

RM: Okay.

JC: Cuz, that's how I usually get in most cars.

KPP: Okay, is there anything else you can think of that maybe you haven't talked to us about?

JC: Not right off hand, I don't.

KPP: If you remember anything, you can get back with us, right?

JC: Yes, I can.

Okay. Did you think of anything else?

I think that's all I can think of right now.

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TRANSCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 16

EXHIBIT KPP-54

KPP: Okay. This statement that you gave, this was of your own free will? Have we promised you

JC: The state, the statement that I have just made is of my own free will. I was not promised anything in return for the statement that I just gave you.

KPP: Okay. Uh, the time right now is 22 minutes after 9:00. I'm going to turn the tape off.

KPP: Kenneth P. Pecyna, Detective/Oregon State Police
RM: Randy Martinak, Investigator/Criminal Justice Division
JC: Johnny Lee Crouse

ct/04-18-89

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TRANSCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57

EXHIBIT KP

KPP: Okay. Today's date is 04-06-89. This is Detective Pecyna and I'm at the, uh, State Police patrol office in Salem. Present with me in this room is, uh, Randy Martinak with the Attorney General's office and John Lee Crouse, and this is going to be an interview of Mr. Crouse. Before I go on, John, I'd like to advise you that this conversation is being recorded. Do you understand that?

JC: Yes, I do.

KPP: Okay. And, the time right now is 9:20 PM. Before I go into the tape, I'm going to advise you of your rights again, okay? I want to make sure that that's on tape. You have a right to remain absolutely silent. Do you understand that?

JC: Yes, I do.

KPP: Okay, anything you do say can and will be used against you in a court of law. Do you understand that?

JC: Yes.

KPP: Okay. You have a right to consult an attorney before making any statement. Do you understand that?

JC: Yes.

KPP: If you are without funds, you have a right to a court appointed attorney at public expense. Do you understand that?

JC: Yes.

KPP: Okay. You have a right to have your attorney present when and if you do make any statement. Do you understand that?

JC: Yes.

KPP: Okay. You have a right to interrupt the conversation at any time.

JC: Yes.

KPP: Okay. Anything you do say must be freely and voluntarily said. Do you

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understand that?

JC: Yes.

KPP: Okay, do you have any questions about your rights?

JC: No.

KPP: And, do you understand them all?

JC: Yes.

KPP: Okay.

RM: Is it true that tonight this meeting here is at your request?

JC: Yes.

RM: That we got a call from over there that you wanted to talk to us, and so we're here at your request?

JC: Yes.

RM: Okay.

KPP: Okay, what I'm going to do is I'm going to go ahead and just rather have you just go ahead and tell us, uh, why you came over and go ahead and explain what you wanted to talk to us about.

JC: I had a flashback earlier today in my cell at OSP SMU, and I seen more of myself in the flashback and remember what I had on. I was told I gave articles of certain clothes I had on. The clothes I had on that night, the piece I missed is a dark blue, almost black, sweatshirt that I had on that night. I had blood on it and I didn't wash, wash the sweatshirt off. A couple of days later, Witt Fish needed it, needed to, cuz all he had was a sweater and I said here, go ahead, take it.

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TRANSCRIBED TAPED STATEMENT GHQ #8900672
MU, INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 3

EXHIBIT KPP-56

KPP: Witt Fish is who?
JC: Was my roommate at the time.
KPP: That's Witney Fish?
JC: Yes.
KPP: Okay.
JC: So, he has that. He should have that, I think he might have it right now.
KPP: Do you think he had washed it by now?
JC: No.
KPP: Where would the blood be at that's on it?
JC: It'd be on the sleeve. On the left hand sleeve.
KPP: Okay, and uh, this
JC: Cuz it was hardly noticeable. That's why I didn't really worry about it. Cuz, I took, the blood dried and I seen it and I said ah heck, ().
KPP: Could you describe the sweatshirt a little more?
JC: It was a zip, it was a zip up hooded sweatshirt with a, with a hat and tie, and there was a long
KPP: Hat or hood?
JC: Hood, and it was an extra large, real long, it hung below the jacket that I had on.
KPP: Okay, you had that sweatshirt under your other jacket?

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TI TRIBED TAPED STATEMENT GHQ #8900672
MUR: INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 4

EXHIBIT KPP-56

JC: Yes.

KPP: Okay.

RM: How close of a match in colors is the sweatshirt and the jacket? You know, are they, they're different colors?

JC: Yeah.

RM: So, the sweatshirt, is the coat lighter than the sweatshirt?

JC: Yes.

KPP: A real lot of difference, or

JC: A whole lot.

KPP: Okay. Yeah, I mean, let's say, uh, if you're looking at it walking on an, um, dark night?

JC: You couldn't really tell.

KPP: Couldn't tell the difference, then?

JC: No.

KPP: Okay.

JC: But in the light you could tell the difference. In the dark you really couldn't tell.

KPP: Okay.

JC: Also, also I described a wire to you tonight and how I used it to get in the car. () I showed it right here.

KPP: That's the hangar that you made for us today?

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TR. IBED TAPED STATEMENT GHQ #8900672
MURD. INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 5

EXHIBIT KPP-56

JC: Yes.

KPP: Okay, now, is that similar to the one that you used that night?

JC: Yes, it is.

KPP: And, that's on what day?

JC: That was on 1-17-89.

KPP: Okay.

RM: Okay, is there any

JC: Also, to verify my earlier tape that I did in an interview, I used a guy's name by the name of Juan. His was a false name.

RM: Is this the Juan that you told me?

JC: Yes.

RM: Was in a 3-piece suit and he offered to pay you \$300,000 to kill Michael Francke?

JC: Yes.

RM: And that, was there any truth to that at all?

JC: No.

RM: Okay, why did you tell me that story?

JC: Just to get you to back off and change it to another direction without me having to come right out and say exactly what happened.

RM: Well, would you say that out of all the statements you gave me, the first

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T. TRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 6

EXHIBIT KPP-56

statement about Juan had paid you to do it

JC: Until, until last night, when you guys took me back out to the, to the Dome Building, and I came back, the statements before that don't mean nothing.

RM: Other than

JC: The others were run around statements. The only statement that was true in all sincerity was the statement that I gave last night, okay?

RM: Would you say that there was only one thing that was true about the previous statements, and that is that in each of the statements you have given us, the guy that hired you to do it, uh, the fact that you stalled; started an altercation with him yourself, and then the, the story you gave us last night, the only common thing that's true in those is that you stabbed and killed a man, or you stabbed a man, and you didn't know that he was dead, but you stabbed a man in all three of those stories?

JC: Yes.

KPP: Are you feeling a little better now that you've talked about it to us, John?

JC: Yeah, I'm just having flashbacks, here now.

KPP: Okay.

JC: But, other than that, uh, I feel better, uh, it's like a thousand pounds lifted off, lifted off. Uh, Cindi asked me in a letter if I was staying with her grandma and her to hide from the police, which I wasn't. I knew I was on the run, but I really wasn't worried about being caught, until I got arrested that night.

KPP: I, I had one other thing that I did think of that I wanted to ask you about and that is, uh, I asked you earlier today when we were up talking to you this morning, about the knives. Now, I just wanted to clarify that while we have the tape going. That knife that we have, I, I wanted you to say again if that, is that the right knife that you have?

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TI TRIBED TAPED STATEMENT GHQ #8900672
MURE INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 7

EXHIBIT KPP-56

JC: Yes it is. The knife, there was two knives that was, uh Detective Mason, uh
picked up off the table and one was just a regular paring knife and the other
one was a hunting knife. And, the hunting knife was the one that I used.

KPP: Single edge, double edge, or?

JC: Single edge.

KPP: Okay. Okay, is there anything else, Randy, you want to talk about?

RM: I have nothing further.

KPP: Okay. Uh, the time right now is 9:26 PM. I'll be turning the tape off.

KPP: Kenneth P. Pecyna, Detective/Oregon State Police
RM: Randy Martinak, Investigator/Criminal Justice Division
JC: Johnny Lee Crouse

ct/04-07-89

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INTERCEPTED TELEPHONE CALL (TAPED)
CROUSE, JOHN LEE DOB 06-14-57 #8900672
04-06-89, 10:50 PM From: SMU Phone: 2438

EXHIBIT KPP-58

JC: I got that yesterday.

CINDY: What?

JC: Huh?

CINDY: Huh?

JC: I got that yesterday, unless you sent two cards.

CINDY: That was it?

JC: Yeah. I got two cards. I got the one you bought me while I was out for just sticking by you,

CINDY: Yeah,

JC: at a difficult time, then I got the other one. And, at the bottom it didn't say a whole lot, and it just says I, you was thinking of me. And at the bottom, you put Johnny, I love you. That's

CINDY: I put a 8 page letter in there.

JC: No, I didn't get it, uh, a 8 page letter in there.

CINDY: Was it opened?

JC: Yeah, they open all my mail. But, there was no 8 page letter in there. Are them the only cards you sent, them two? Or, did you send another one? I haven't got an 8 page letter.

CINDY: I put an 8 page letter in with a card that had the ocean on it. I'll guess I sent you two of them then.

JC: Okay.

CINDY: I did. Okay. Uhh, fuck.

JC: But, you was sitting, sitting out there today and I was read, read your letter, and I just started crying.

CINDY: That was just how I felt all night, I just

JC: That's okay. I didn't read the big letter. I read it afterwards. I didn't get mad or anything

CINDY: The which one?

JC: The one you brought up to me today. I didn't get mad about none of it. I'm gonna answer everything that's in it.

CINDY: Those were just feelings.

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 2

EXHIBIT KPP-58

JC: That's okay. I'm glad you wrote that.

CINDY: I had to get it out.

JC: I know you did.

CINDY: And, I've been told not to talk to anybody, so,

JC: Yeah.

CINDY: I just had to get it out, put it on paper.

JC: You're doin' good. I'm glad you did. I'm glad you did.

CINDY: I can't keep this shit inside me.

JC: I don't want you to.

CINDY: It'll kill me. I mean, I've got all these other fucking things () that I'm dealing with

JC: Um hum.

CINDY: And, uh

JC: No, between you and I, and nobody else knows, I'm going back over next week.

CINDY: Tell me again, when you going back over there?

JC: Next, it'll be next week when I go back over. I'm not sure of the date. I'm not, I says I'm going to come back over and re-do everything, and finish it. And I says when I do it, I want Cindy there with me.

CINDY: Did you sign the confession?

JC: Did I? No, there's no sign, I, I ain't signed nothing.

CINDY: God, John, you looked at me in the face and you told me exactly how it happened and what happened.

JC: Don't, don't say nothing over the phone, okay?

CINDY: You don't have to, I already know.

JC: What's that? Yeah, okay.

CINDY: I already know.

JC: Thank you.

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 3

EXHIBIT KPP-58

CINDY: You're welcome.

JC: I didn't, we know, but

CINDY: It's okay.

JC: But, I love ya and I want to get out and I want to be with you, bad, real bad.

CINDY: Big time bad.

JC: When I, when I'm with you and when I was with you today, I felt complete. When I seen you a sittin' outside, I felt pretty good, and when you was completely out of my sight, I was empty. Totally empty.

CINDY: Not there.

JC: Because I told you that I loved you from my heart, cuz I do, and I didn't make you a bunch of promises and sweep you off your feet. And, I'm going to write all that in a letter.

CINDY: You did what?

JC: I didn't soft sweet talk you and all that, fill your head full of dreams, cuz I didn't. Cuz

CINDY: Cuz, it'll happen, or what?

JC: Huh?

CINDY: Cuz, it'll happen, or what?

JC: What's that?

CINDY: All the promises

JC: Yeah, yeah. I wanted it, I want more with you than I've really wanted it with anybody I've ever been with. There's just something, I don't know if I can, how do you explain what you feel in your heart.

CINDY: Well, the other 8 page one you'll like better than the one you got today.

JC: I miss you so bad. Understand that I look out my window and that's all I think about, is you.

CINDY: Did I what?

JC: I just think about you.

CINDY: Oh....

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 4

EXHIBIT KPP-58

JC: When I write you, I'm with you. You know what I'm saying?

CINDY: Um huh.

JC: And, I wrote on a big piece of paper today, I love you Cindy, I love you from the bottom of my heart, and I put it in the mail. Because I really do.

CINDY: I believe that.

JC: And, I believe that you love me, too.

CINDY: I do. Did you hear me, today?

JC: I heard you. Had to wait 'til you got downstairs,

CINDY: I don't want to cry

JC: That's okay, right

CINDY: I would have

JC: I know you would have. I miss you so bad

CINDY: Yeah, me too.

JC: I miss holdin' you, the things that we done

CINDY: I'm really scared, though, John

JC: I know

CINDY: I am real scared.

JC: And I don't, and I can't comfort you over a phone.

CINDY: No.

JC: That's what I was trying to do in there today, was to just comfort you.

CINDY: But see, I gotta tell you, when I went in there today,

000: You was just, yeah, go ahead

000: CINDY: I wanted to, uh, I just wanted to walk away from it, and not turn back.

000: JC: Yeah. What made you not?

CINDY: Huh?

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 5

EXHIBIT KPP-58

JC: What made you decide not to?

CINDY: When you told me last night what you told me,

JC: Yeah,

CINDY: I wanted away from it. If you did that, if you really honestly seriously did that, I can't be with you and I can't stand by you.

JC: I understand that.

CINDY: But, if you didn't do it, then I will stand by you and I will fight with you and I will fight for you til fuckin' () or whatever.

JC: Well, it looks like it'll be downhill now.

CINDY: Huh?

JC: It just looks like it's downhill now, too.

CINDY: Nah

JC: Huh?

CINDY: Nah.

JC: You noticed, today I didn't stick my tongue out?

CINDY: Uh huh. I'm glad. You didn't have to.

JC: I like doin' that to you.

CINDY: What?

JC: That.

CINDY: Oh...don't talk about it, you'll make yourself crazy.

JC: Huh?

CINDY: You'll make yourself crazy.

JC: You'll make yourself crazy.

CINDY: It's real easy for me to take care of myself.

JC: I can take of mine, too.

CINDY: Huh, real quick.

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 6

EXHIBIT KPP-58

JC: And I,

CINDY: Quick, easy, efficient. I really like where it's at. It takes 'em two minutes and it's done, and I'm fine.

JC: It takes me longer, huh?

CINDY: I like it.

JC: Huh? You like it longer?

CINDY: Yeah. So what're you gonna do?

JC: I'm gonna, uh, sit down and write you a real nice letter tomorrow, okay?

CINDY: Don't write me no dirty stuff, okay?

JC: I won't. I wanta write you how I feel, inside about you. You answer to that in the letter. Did you like the last letter you got today? A lot of feelin' in there

CINDY: Huh?

JC: A lot of feeling in that one you got today. A whole lot. I meant what I said. When I told you I wanted you, to get you fixed,

CINDY: Uh huh,

JC: I meant that.

CINDY: That was a big thing to me

JC: I know. Once I get back over there next week

CINDY: Uh huh,

JC: Depending on how long it takes here, I shouldn't be here, I should be home.

CINDY: By when?

JC: When all this is done. I ain't gonna say a date, Cindy, I don't wanta say a date. Okay? After next week I might, I'll probably be able to.

CINDY: To what?

JC: After, after next week I'll be able to, but I can't right now. I don't want to put a hope in your head right now that I can. Just stand by.

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 7

EXHIBIT KPP-58

CINDY: We'll talk about it.

JC: What day do you want to come, I'm going to uh,

CINDY: I told Forbes Saturday

JC: Saturday?

CINDY: Saturday at 1:00. He said he'd try to get me in there right at one so I wouldn't have to sit around and wait.

JC: Okay.

CINDY: He was really nice to me.

JC: Yeah. Yep.

CINDY: He was real decent to me.

JC: Yeah, he's decent to me too, he treats me good.

CINDY: Good.

JC: He got tobacco too about, oh, he's got me coffee, he got me a radio, head phones, what station are you listening to?

CINDY: I don't have the radio on.

JC: Well, when ya?

CINDY: What are you listening to?

JC: I listen to either, uh, KISN, cuz you like that station

CINDY: Uh huh,

JC: So, I've been listening to that most of the time now. I figure you'd be listening to that, so we'd listen to it together, separate places. How 'bout that?

CINDY: Somebody's coming on,

JC: You gotta turn the switch on the top. Take it off of tape unless you had a tape on. Have you looked at your picture very much, today?

CINDY: Of what?

JC: Of that one of me, have you looked at it much?

CINDY: Have it right in front of me, any one of 'em.

JC: Huh?

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INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 8

EXHIBIT KPP-58

CINDY: They're all in front of me.

JC: Which ones?

CINDY: All of 'em.

JC: All of 'em?

CINDY: All of 'em. Got it on the bed,

JC: Even, even the one of me standing in the shower?

CINDY: Yes.

JC: I want that one of you

CINDY: () when it's, oh, it's not plugged in. They wanted to know about those pictures. I thought, you know, what the fuck. If I want to take dirty pictures, that's my own business.

JC: Uh huh

CINDY: My own personal business.

JC: Yes.

CINDY: Now, what in the fuck do pictures, individual pictures of naked people have to do with what they had me in there for?

JC: I want to ask you for one, only one, okay? That one of you standing in the shower.

CINDY: I shouldn't do that. I can't find it.

JC: It's in the photo book.

CINDY: What station is KISN?

JC: Do you know, uh, where all them three country stations are?

CINDY: Yeah.

JC: Down past 100? About 98....

CINDY: Below it.

JC: Yeah.

CINDY: What's on the radio?

JC: I don't know. I ain't got a radio on in here.

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 9

EXHIBIT KPP-58

CINDY: Oh.

JC: I'm in the office.

CINDY: I'll listen for it.

JC: That's where I'm at all the time. That's where I stay at all the time.

CINDY: Is where?

JC: On KISN. Okay?

CINDY: I'll leave mine on that, too.

JC: Okay. Now, another thing that we can do is play it for a half hour a day, just lay back, at that same time, and just lay back and think of each other. You tell me the time we'll be doing it, I'll do it. Are you gonna come up there again, tomorrow?

CINDY: To the park. I'll probably spend a lot of time at that park.

JC: Will you?

CINDY: Probably.

JC: You gotta get out and walk around a little more.

CINDY: I walked up to the fence today.

JC: Yeah, I seen you. It was great. You're great for me, treating me like a king.

CINDY: I like that little park. It's a good place to jog

JC: Another,

CINDY: () work out ()

JC: Okay, another thing, too.

CINDY: Huh,

JC: Before, what you told me tonight?

CINDY: Uh huh,

JC: It's not a good idea to go over there at night.

CINDY: Why?

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INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 10

EXHIBIT KPP-58

JC: It just is not.

CINDY: Oh, fuck no, that's a nasty neighborhood.

JC: Yeah.

CINDY: People get killed in that neighborhood.

JC: So, uh, let's just

CINDY: I'm sorry,

JC: So, just do it during, just do it during the day, okay?

CINDY: You didn't hear me, did you?

JC: No. I heard you, but I passed it off.

CINDY: I thought it was funny.

JC: (laughs)

CINDY: Hey, I'm trying to keep a sense of humor about this, okay?

JC: I know you are. But, just do it during the day, okay, no more at night, please.

CINDY: I keep my door locked.

JC: Oh, do you? Well, I figured just during the day would be okay.

CINDY: Okay.

JC: Please?

CINDY: I'll buy that.

JC: I can't see ya at night anyway. I won't be able to see you ().

CINDY: 3:00, everyday.

JC: Okay, over there?

CINDY: Uh huh.

JC: Okay.

CINDY: That's like right after visiting hours.

JC: Yeah. I want to tell you, you looked good today, too.

CINDY: Huh?

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 11

EXHIBIT KPP-58

JC: You looked good today, too.

CINDY: Thank you.

JC: I know I looked like shit. I'm growing a beard cuz I ain't using an electric razor to shave. That okay?

CINDY: Huh?

JC: I'm growing a beard cuz I don't want to use a electric razor to shave.

CINDY: That'll be fine.

JC: I miss waking you up in the morning, and when you wake me up (coughing)

CINDY: I need to let you go.

JC: Oh do you? You ain't got ahold of me, baby.

CINDY: Huh?

JC: You don't have ahold of me.

CINDY: Cross your arms,

JC: () okay, I'm ready.

CINDY: Put one hand on each shoulder.

JC: Okay,

CINDY: Okay, now squeeze, real hard ... and that's a hug from me.

JC: Here's a hug from me too and I love you.

CINDY: And, I love you too.

JC: I love you very much. Hey,

CINDY: Tomorrow's Thursday?

JC: Yes. No, tomorrow's Friday.

CINDY: Huh uh.

JC: Yes, it is.

CINDY: Huh uh.

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INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 12

EXHIBIT KPP-58

JC: Let me look. What's tomorrow, what's the date tomorrow?

CINDY: Tomorrow's the 7th.

JC: The 7th is Friday.

CINDY: Oh, go away.

JC: It is.

CINDY: No.

JC: Yeah, why?

CINDY: Oh, God, I really did

JC: Why?

CINDY: I lost a day.

JC: You did?

CINDY: I lost a fucking day, man, the 5th.

JC: Are you gonna get, are you going someplace now?

CINDY: Am I?

JC: Yeah.

CINDY: Uhhhh

JC: You really should just stay there and lay back and get some rest, baby.

CINDY: I need some smokes, to smoke. I don't have no cigarettes.

JC: Uh, and you won't smoke grandma's,

CINDY: Huh?

JC: You won't grandma's

CINDY: Grandma don't like mine. She takes valium.

JC: Yeah.

CINDY: I'm sorry. I was just talking on. You know what I'm saying?

JC: Um huh.

CINDY: Okay

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INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 13

EXHIBIT KPP-58

JC: Um huh.

CINDY: And, I want to go to sleep.

JC: Yeah, you need that.

CINDY: And, uh, I desperately want to go to sleep.

JC: Yeah, you need to

CINDY: So, I need to, you know?

JC: I know, I know

CINDY: I need to

JC: You sleeping with a teddy bear?

CINDY: Yep.

JC: ()it?

CINDY: Yes. I gotta go, baby.

JC: I hate to let you go, cuz they're giving me some time, they're out there, talking. Usually on this phone you only get ten minutes.

CINDY: Ummm. Grandma's waiting for a phone call from Sam.

JC: Oh. What did grandma say when you told her? Or you mom? Can't believe it.

CINDY: Mom and grandma are scared to death for me.

JC: Did you tell them they didn't need to worry?

CINDY: Uh huh.

JC: You tell them they don't need to worry?

CINDY: Yeah, but you, qui, it's like my mom

JC: It's okay. I know.

CINDY: told me, she said put, put yourself in our position.

JC: Yeah,

CINDY: You know, this is your daughter, your granddaughter, you know?

JC: Uh huh.

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INTERCEPTED TAPED CALL #89006..
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 14

EXHIBIT -58

CINDY: And, this is not just a, a little homicide, this is the big guy from Oregon Correctional Institute. You know, that's big time shit, there.

JC: Uh huh.

CINDY: I mean, that's not, that's nothing to fucking play around with.

JC: Okay. I'm gonna tell you something else that's gonna make you feel real good.

CINDY: What?

JC: but don't tell nobody.

CINDY: Okay.

JC: Pecyna and that other guy told me they didn't believe I did it, either.

CINDY: Who?

JC: The two I just said. Whoever I've been talking to about this.

CINDY: Oh.

JC: They told me tonight over there they don't believe I did it. Cuz I took a lie detector test and passed it.

CINDY: Because why?

JC: I took a lie detector test and I passed it.

CINDY: A personal one?

JC: A personal one.

CINDY: Oh, good.

JC: Yeah, a personal one. I was hooked up. They asked me if I killed Michael Francke.

CINDY: I, I don't know what's the difference, exactly, between a personal one and then a court one, is there

JC: There's a lot of difference

CINDY: One, one you're hooked up to and the other one you

JC: But, see, this is, this is what I'm thinkin'. It's like I want to talk to you, but when I see you, I want to talk about good things.

6001012

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 15

EXHIBIT KPP-58

CINDY: Other things

JC: You know?

CINDY: The next time we talk, Johnny, we have to talk about this.

JC: I know. I know. But, we'll talk about it. I can talk to you about it in a letter, if that's what you want.

CINDY: Uh huh.

JC: Okay. Okay.

CINDY: I don't want nothin' on paper.

JC: Okay. Then, don't write me nothin' on paper about it, neither.

CINDY: I won't.

JC: And, the thing is, I, I don't want to, I don't wink and tell you they know I know the person.

CINDY: Got what?

JC: They know I know the person. I'll tell you about it when I see you.

CINDY: I already knew that.

JC: Okay.

CINDY: You can't do another, another one for somebody else.

JC: No.

CINDY: I'm sorry.

JC: Uh, and, uh

CINDY: I can't let you.

JC: You won't let me

CINDY: No way.

JC: Your love's too strong.

CINDY: You stay behind bars, Johnny, and I lose you.

JC: I know it. And, you don't want to?

CINDY: No, I don't. If you did this, we're, we're done.

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INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 16

EXHIBIT KPP-58

JC: I know it. I'm sorry, I'm not losing you and you ain't losing me, you're stuck for life.

CINDY: Okay.

JC: Cuz, it's like you told me, you're stuck, boy.

CINDY: Huh?

JC: Like you told me I was stuck with you.

CINDY: What time is it?

JC: And that, and that warrant they had on me?

CINDY: Um huh

JC: That's what it was about, this right here.

CINDY: The what?

JC: This, right here. Cuz, they've been looking for me to talk to me. I didn't know that.

CINDY: I heard that, too. Tonight.

JC: Uh huh.

CINDY: They didn't pick, they didn't, they picked you up because they ran a, because on an Assault IV, that's a infraction, they write you a ticket,

JC: Uh huh,

CINDY: And, they ran a check on you and that's why they took you in.

JC: Yeah.

CINDY: And then they charged you with Assault IV.

JC: Yeah.

CINDY: Thank you.

JC: Ah, I love your voice.

CINDY: Huh, my voice sounds terrible.

JC: No, it don't

CINDY: Baby, grandma's going to be madder than hell at me and I've gotta

0001014

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 17

EXHIBIT KPP-58

leave, okay?

JC: Yeah. Okay. I probably won't be, I'll try to call you as soon as I can in the morning, okay?

CINDY: Okay.

JC: Then, if I can't, I'll have to wait 'til Forbes gets here.

CINDY: At what time?

JC: I'm not sure, but he told me if I needed to, if I need him all I had, if I need him at any time, I can call him at home and tell him to get in here.

CINDY: Okay

JC: And he'll come. That's what he did tonight. I called him at home, and he came in. He's the only one that takes me out of this institution. I didn't give it to him. Will you promise, I don't want to say nothing. I, I'll, I have some good news. I want to tell you when you come visit me, that you'll write me.

CINDY: Okay.

JC: Member the statement that you made in the visiting room today?

CINDY: About?

JC: Where we stayed at for awhile?

CINDY: Yeah?

JC: Yeah. Forbes says maybe, heh.

CINDY: Really?

JC: Yeah.

CINDY: What a guy.

JC: Yeah. He like, he like, he likes me. He has a lot of respect for me.

CINDY: We'll talk about that later.

JC: I will. I will but, I want you to take care of what you gotta take care of,

CINDY: I will,

JC: I want you to go home and I want you to get to sleep.

0001015

INTERCEPTED TAPED CALL #8900672
CROUSE, JOHN LEE 04-06-89, 10:50 PM
Page 18

EXHIBIT KPP-58

CINDY: Call me first thing in the morning. I need that account number,
John. I need some money.

JC: I know it.

CINDY: They're gonna repossess my car.

JC: I know it. I'll try to get back to you at night

CINDY: You know, all my stuff in storage

JC: Yeah. Yeah. But, uh, I'll let you go.

CINDY: Okay.

JC: I don't want to, but I will.

CINDY: I'll talk to you in the morning.

JC: I could talk to you all night, I wish they'd just let me go

CINDY: I know, John, I have to go.

JC: Uh huh,

CINDY: Please

JC: Yeah. I love you, baby.

CINDY: I love you, too

JC: Keep smiling

CINDY: I will

JC: Everything'll work out.

CINDY: I'll talk to you in the morning.

JC: I miss you.

CINDY: I miss you

JC: I love you

CINDY: I love you.

JC: Buy, love

CINDY: By, hon.

ct/04-10-89

601009

TR. UNRECORDED TAPED STATEMENT GHQ #8900672
MURD. INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57

EXHIBIT KPP-78

KPP: The time right now is 7:15 PM. Today's date is April 9, 1989. Present in this room is me, Detective Kenneth Pecyna with the Oregon State Police and John Lee Crouse, and we are at the Salem State Police patrol office at the District II Headquarters. John, do you understand that this conversation is being recorded?

JC: Yes.

KPP: Okay, and what I'd like to do before we continue, uh, I'd like to advise you of your rights. Do you have any problems with this conversation being recorded?

JC: No, I don't

KPP: Okay. I'm going to go ahead and go over these rights with you. It says, you have a right to remain absolutely silent. Do you understand that?

JC: Yes.

KPP: Okay. Anything you do say can and will be used against you in a court of law. Do you understand that?

JC: Yes.

KPP: Okay. You have a right to consult an attorney before making any statement. Do you understand that?

JC: Yes.

KPP: Okay. If you are without funds, you have a right to a court appointed attorney at public expense. Do you understand that?

JC: Yes.

KPP: Okay. You have a right to have your attorney present when and if you do make any statement.

JC: Yes.

KPP: Okay. You have a right to interrupt the conversation at any time.

0001019

E. R.-1070

0136

1 SCRIBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 2

JC: Yes.

KPP: Okay. Anything you do say must be freely and voluntarily said. Do you understand that?

JC: Yes.

KPP: Okay. Do you understand all these rights?

JC: Yes, I do.

KPP: Okay. Do you have any questions about your rights?

JC: No, I don't.

KPP: Okay. Uh, next thing I'd like to do is, uh, now that we've gone over the rights, I have things we ... you want to just go ahead and talk about it?

JC: I'd like to put on tape first that I would, um, at OSP, um had Captain Forbes call so I could come over and talk to you to clear, to get this all over with today. There wasn't, nobody called me and asked me if I wanted to come over and talk, it was all of my own free will.

KPP: Okay.

JC: And the reason, the reason I asked to come over here is I thought, I wrote down on paper, of everything I've done before, from December 4th, 1988 up until, uh, the time that I was arrested on, uh, April 2nd, 1989. I've thought back on who I've been with and where I've been.

KPP: Okay. Now, you have not been arrested for any, uh, other crime or anything like that. It was a probation violation you were arrested for?

JC: Yes.

KPP: Okay.

JC: Yes.

KPP: And, nothing connected with the crime of, uh, the murder of Michael Francke have you ever been

0001020

1. UNRECORDED TAPED STATEMENT GHQ #8900672
MURL INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 3

arrested for, have you?

JC: No.

KPP: Okay. I just wanted you to understand that. Okay. All right, did you want to just go ahead and explain, uh, some of the things that you were wanting to talk about?

JC: Okay. At the time of the crime that I did this crime, I want to state for a fact I did it. I didn't know it was Michael Francke. And, at the time I was living with a, a gal, a lady named Lucinda Cooley, who goes by Cindi Lou. Uh, one morning we woke up and she said, "You know, you was doing a lot of talking in your sleep last night. And, she looked at me sort of funny but never said nothing else. Uh, another thing that I'd like to put down is, umm, I have two sheaths for the knife that, for the knife that's been seized, and uh, when the investigation first, first took place, place, uh, I have another one of the sheaths out at Penny Fox's house, 3360 Camellia Drive S. It's in her garage in one of the boxes outside, in the garage, if she hasn't moved it. Uh,

KPP: Do you have any problems with us looking at that property?

JC: No, I don't.

KPP: Okay.

JC: Uh, another thing is, uh that the last stab wound and confrontation I had with the victim, at the time I was behind the car about eight feet, at the Dome Building. I don't reme, and when I took off running, I was on the concrete the whole time, when I took off.

KPP: Okay. Which way were you facing the last contact with Michael Francke?

JC: I was, I was facing towards the Dome Building.

KPP: Okay, and which way was, uh, he facing?

JC: Uh, towards, uh the car.

KPP: Oh. Okay, would that be directly away from the building, the Dome Building?

0001021

T. DESCRIBED TAPED STATEMENT GHQ #8900672
MURL INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 4

JC: His back, his back would be towards the Dome Building at the time.

KPP: Okay. Uh, do you recall seeing anybody in the neighborhood?

JC: No, I don't

KPP: Okay. Uh, and that was eight feet, you say you think it was?

JC: Approximately eight feet, eight to ten feet.

KPP: Okay. Was it directly behind the car, or was it to the right or left of the car?

JC: It was, it was behind the car.

KPP: Okay.

JC: About dead center, probably, to one side just a little.

KPP: Okay. And, why on this sheath, uh, I asked you about that and you brought it up your own when we were talking earlier.

JC: One, one sheath sits up straight, is a better sheath than the other. Uh, the sheath that you have with the knife that was confiscated is a real loose sheath on, on a thin belt, and it didn't stand up right all the time. It's just an old sheath.

KPP: So, did you switch these sheaths, periodically, or

JC: Yes, I have, I've switched 'em every few days, and one

KPP: Why did you do that?

JC: And, one sheath, the knife came out easy and the other one you had to tug it out ().

KPP: Okay. But, the knife we have is the correct knife?

JC: Yes.

0001022

UNRECORDED TAPED STATEMENT GHQ #8900672
MUR. INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 5

KPP: Okay. And, uh, so what you were saying about the sheaths earlier, in our earlier statement we obtained, you had talked about the sheath and how you had cleaned it.

JC: Yes.

KPP: Did you clean this sheath, like you said?

JC: I cleaned all I could clean out of it, without taking the rivets out.

KPP: Okay. Could you describe the other sheath better for me?

JC: The other sheath has uh, it's a stiff newer sheath, uh, it's a hunting knife sheath, not a, a big hunting knife. A medium sized hunting knife sheath. It was, it was new, uh, ain't hardly been used at all, hardly.

KPP: What color would it be?

JC: It'd be brown leather.

KPP: Okay. And, it's not that other small sheath with that knife, the other small knife.

JC: No, no. The other knife is a paring knife. It was just in a small sheath.

KPP: Okay. And, uh, what is the reason that you're talking about it today?

JC: Because, uh, I went over it in my mind and I'd just like to get it over with. I've been in, that I'm in the right head space and I'd like to just get my interviews done with, so I can continue on with what I have to do. Okay.

KPP: Okay. And, uh, what about your girlfriend, Cindi?

JC: A lot of, umm, the reason I hesitated about a lot of my interviews was that I've met Cindi after this crime has happened, and I felt, I feel very close to Cindi and I don't want to lose her behind this crime.

KPP: You feel by talking about it that she, you would lose her?

0001023

1 UNRECORDED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 6

JC: Yes. And, uh, I just don't want to lose her behind this. I just, she gave me a hope again when her and I was together, but I never talked about this crime to her. I just let it, I figured that sooner or later I, I'd get over what happened and just continue on my life. I was starting up a new life with her, as I was trying to do when I was out.

KPP: Okay. Now, at the time of the crime, were you wearing gloves?

JC: No, I was not.

KPP: Okay. And, what about a hat. Could you,

JC: I had, I had a hat. I can't recall. Uh, usually when I get into most cars I usually take the hat off and put it in my coat pocket, so later on when I'm running or something from the scene of the crime, I just have to put it on my head and, uh, sorta change my identity a little. This could've happened that night. I can't recollect, exactly.

KPP: Okay. So, it's possible that you

JC: Coulda had it in my pocket and just put it on later without realizing, thinking about it.

KPP: Okay. Okay, and another thing I wanted to ask you is, uh, before we get finished, is about consent. On the items that we have, uh, gotten from you, we had gotten consent for specific clothing and, uh, then there was a verbal understanding as far as collecting items of clothing. Uh, I wanted to get your thoughts as far as what your understanding of, if that is accurate as to what I was asking you on that?

JC: Uh. That, my, my, my understanding, and it'd be okay with me, that anything that Cindi Hathoway has of mine if she consents and says it's okay for it to be checked out, I feel that's fine. Uh, uh, because she's doing only what she feels right, and uh, if she thinks it's right, it's okay with me. Anything that she says can be seized by this, for this investigation, it's okay with me.

KPP: Okay. Uh, what I want to understand, too, is uh, do you want, I mean do we have to go to her and get her permission, or are we coming to you to get your independent permission?

JC: You, if you think that other things need to be seized or looked through and sent to the lab, you can go to her and ask her just to give it to you.

0001024

TI CPTBED TAPED STATEMENT GHQ #8900672
MURDER INVESTIGATION/JAMES MICHAEL FRANCKE
INTERVIEWED: CROUSE, JOHNNY LEE DOB 06-14-57
Page 7

KPP: Okay. Okay, but I want to know that it's with your permission.

JC: It's with my permission.

KPP: Okay, and that's of your own free will, and not trying to...give you anything for that.

JC: Yes, yes. Nothing, nothing has been promised to me and nothing of any sort or anything to my investigation here with you. You have not promised me nothing.

KPP: Okay. All right.

JC: And, and no deals made, whatsoever, on anything

KPP: Okay. Is there anything you think you'd like to add?

JC: No. I, uh, I feel regret because I didn't mean for it to, uh, be a murder because I wasn't out to kill a man. I didn't know it was Michael Francke 'til the next morning, that I, uh, I got scared and I tried to run and I couldn't do it. And, I was trying to get the guy off me to run, to get away for awhile, and it was just, uh, somethin', bad accident, it turned out the way it did.

KPP: Alrighty.

JC: I'm sorry that it happened, but sorry's not going to bring the guy back.

KPP: Okay. Well, I think that concludes this, uh, tape, and the time right now is 7:27 PM. I'll be turning the tape off.

KPP: Detective Kenneth Pecyna, Oregon State Police

JC: John Lee Crouse DOB 06-14-57

ct/04-10-89

0001025

MURDER - GHQ #8900672
VICTIM: FRANCKE, JAMES MICHAEL
Page 2 (CROUSE MEDICAL RECORDS)

MENTIONED PIERCE, WILLIAM J., Senior Trooper FORBES, JEFF, Captain
OTHERS: Oregon State Police, McMinnville, OR Oregon State Penitentiary, Salem, OR
(Continued)

EXHIBITS: One (1) cassette tape of interview with John Lee Crouse on 04-13-89, 3:00 PM to 3:13 PM, marked Exhibit KPP-81; placed into SPO Evidence. (Transcription of above exhibit KPP-81 attached to this report).

ACTION TAKEN: On 04-11-89 at 9:15 PM, writer was contacted by telephone from Captain Jeff Forbes of the Oregon State Penitentiary. He advised that Crouse had wanted to talk with the writer regarding his previous statement denying the killing of Michael Francke on 04-11-89 to writer and Detective Glover.

On 04-13-89 at 2:05 PM, writer and Detective Randy Martinak contacted John Lee Crouse at the Salem State Police patrol office. At 2:06 PM, John Crouse was advised of his constitutional rights, per prepared card, which he stated he understood and signed.

After being advised of his constitutional rights, Crouse advised that the reason he gave Detective Glover the statement stating he had not killed Michael Francke was that Detective Glover was new as far as interviewing him in regards to this Francke investigation and he thought he would have a ray of hope to get away with it. He further indicated to writer and Det. Martinak that he could not live with getting away with the Francke murder. Crouse went on to say that during the fight with Michael Francke on 01-17-89, that he had sustained a sore jaw where Francke had struck him. His jaw or face, however, did not sustain any bruises. Crouse further went on to describe the wire that was used to enter Michael Francke's vehicle as a light type hanger wire, which was just dark colored and not painted white. Crouse further indicated that this wire might possibly be with Nancy Smith's property which is either at Penny Fox's or at Nancy Smith's mother's. Crouse also indicated that on 01-17-89, he was sure that he had placed a telephone call from the phone booth at Park & Center Streets in Salem to his brother. However, he could have billed it to Penny Fox or the Monterey Apartments. He indicated that Debby Hollopeter or Floyd Bunn had asked him about several telephone calls.

At 3:00 PM, a taped interview was conducted of John Lee Crouse in which he stated he understood that it was being recorded and agreed to its being recorded. Again, Crouse was advised of his constitutional rights, after the tape was turned on. Crouse indicated on this tape that he requested to talk with writer and Det. Martinak this date. Crouse also on tape was advised of and shown some medical record release forms from Oregon State Hospital, Salem Hospital, and Bridgeway. These release forms were for the release of medical records pertaining to John Lee Crouse, and he was advised that these records if obtained with his consent could be used for potential criminal prosecution against him regarding the James Michael Francke murder investigation. Crouse indicated he understood and agreed, and then signed the forms. Crouse went on to indicate, basically, the same information as discussed earlier in this report. (Refer to attached transcription of Exhibit KPP-81 for complete details, attached to this report). This taped interview was concluded at 3:13 PM.

0001028

E. R.-1077

MURDER Q.#8900672

VICTIM: FRANCKE, JAMES MICHAEL

Page 3 (CROUSE MEDICAL RECORDS)

ACTION TAKEN: The medical release forms were signed by Crouse after the tape was concluded.
(Continued)

There is no further information at this time.

CASE STATUS: Investigation continuing.

KPP:ct

04-24-89

0001029

E. R.-1078

TF CRIBED TAPED INTERVIEW GHQ #8900672
C: E, JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM

EXHIBIT KPP-81

KPP: Okay. Today's date is April 13, 1989, and the time right now is 3:00 PM. We're at the Salem State Police patrol office. Present at this interview is Randy Martinak, with the Attorney General's office, Detective Kenneth Pecyna, with the Oregon State Police, and we'll be interviewing, uh, John Lee Crouse. Uh, John, I want to advise you this conversation is being recorded. Uh, do you understand that?

JC: Uh huh, yes.

KPP: Okay. Do you have any questions about, or any problems with this being recorded?

JC: No.

KPP: Okay. Before we continue, what I'm going to do is, uh, I've advised you of your rights already, but I want to go over those on the tape now that we have it going and just make sure that you understand those completely, okay?

JC: Okay.

KPP: Okay, uh. You have a right to remain absolutely silent. Do you understand that?

JC: Yes.

KPP: Okay. Anything you do say can and will be used against you in a court of law. Do you understand that?

JC: Yes.

KPP: Okay. You have a right to consult an attorney before making any statements. Do you understand that?

JC: Yes.

KPP: Okay. If you are without funds you have a right to a court appointed attorney at public expense. Do you understand that?

JC: Yes.

KPP: Okay. You have the right to have your attorney present when and if you do make any statement. Do you understand that?

JC: Yes.

0001030

TRANSCRIBED TAPED INTERVIEW GHQ #8900672
CROUSE, JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 2

KPP: Okay. You have the right to interrupt the conversation at any time. Do you understand that?

JC: Yes.

KPP: Okay. Anything you do say must be freely and voluntarily said. Do you understand that?

JC: Yes.

KPP: Okay. Do you understand these rights?

JC: Yes.

KPP: Okay. Do you have any questions about your rights?

JC: No.

KPP: Okay. Uh, the next thing I'd like to ask you is, uh, uh, was it at your request that you want to come over and talk to us today, or

JC: Yes, it was.

KPP: Okay. And, uh, you don't have any problems with talking to us, to us?

JC: No.

KPP: Okay. Uh, what was it that you wanted to talk to us today about?

JC: I wanted to come over and just get it cleared up. I, uh, came over a couple of days ago and, uh, uh, Detective Glover came in here and I gave him another story prior to the one I gave that was the truth about the crime and what took place. Then, when I, Glover came in here and said I thought, he said I didn't think, he didn't think that I was the one that did the crime, then I just went on with something else. And, I knew it was a lie when I already know prior to that I came over here and gave you the truth of what happened and what I remember. And, that's why I'm here today, to come over here and say hey, I already told the truth and I just want to get this over with.

KPP: Okay, now he asked you if you did it first, though, didn't he? Uh, Detective Glover did.

0001031

E. R.-1080

TI 'CRIBED TAPED INTERVIEW GHQ #8900672
CI E, JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 3

JC: Yeah, yeah, then I just, he, then I just lied my way out of it, gave him another story.

KPP: Okay.

JC: Then I wasn't feeling comfortable within myself for the last three days, and I told myself I already told the truth on tape prior to that, and I just want to get this done and over with.

KPP: Okay. So, the truth is that you did kill Michael Francke?

JC: I, at the time that the crime was going on, I didn't know the man was Michael Francke.

KPP: Okay.

JC: I didn't know until the next day.

KPP: All right. But, nobody's giving you any promises to, uh, come back and talk to us today, or

JC: No

KPP: uh, or we haven't asked you to come over here. It was at your own free request?

JC: Yes.

KPP: Okay. I have a, a few questions I'd like to just go over with you, uh, after I get done, uh, going over these, uh, consent forms. And, uh, these consent forms that we have are from three different places, institutions, and, uh, one of which is from the Bridgeway, uh, it's the bridge to recovery, and I think that's an alcohol or drug rehab center?

JC: Anger management class.

KPP: Oh, okay. Anger management class. Uh, the next one is from the Oregon State Hospital, and that would be in relation to, uh, probably the C.T.P. on that?

JC: Yeah.

KPP: Anything else over there that you were involved in, and the, uh, Salem Hospital. And, what these are for, uh, these three forms are for the release of your, uh, of the records that they have, any and all

0001032

TI CRIBED TAPED INTERVIEW GHQ #8900672
CRIBED, JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 4

records over there. And, uh, it states on these forms that it's the purpose of these, uh, records are for an ongoing criminal investigation and potential criminal prosecution. Uh, now, do you understand the nature of the, of that statement?

JC: Yes, I do.

KPP: Okay. What would that understanding be to you?

JC: Just so you can get and, uh, read my reports on how I acted, and that, uh, C.T.P. program medical report at the Salem Hospital when I went over there, and that Bridgeway, what we talked about over there.

KPP: Okay, and at the, okay that's the State Hospital, Salem Hospital, and uh, Bridgeway. But, you understand that these records that we get could be used in a, potentially against you in a criminal investigation, and this is for the purpose of, uh, this Francke investigation?

JC: Yes.

KPP: Okay. And, you have no problems with that?

JC: No.

KPP: Okay. Uh, one of the things I wanted to ask you, these will, shouldn't take too long, is uh, during the confrontation with uh, that night on the 17th of January, 1989 with uh, this person that you later determined was Michael Francke, uh, do you recall during this fight that you had been hit?

JC: Yes.

KPP: Okay. Do you recall where you were hit?

JC: In the face.

KPP: Okay, where about?

JC: In the jaw area.

KPP: Okay, uh. Did you, uh, obtain or sustain any other marks or bruises?

0001033

TR CRIBED TAPED INTERVIEW GHQ #8900672
CROU JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 5

JC: No, it was just my jaw was sore for about three days afterwards.

KPP: Did you require any medical attention?

JC: No.

KPP: Okay. Uh,

RM: And, when you, when he hit you in the jaw, okay,

JC: It just about knocked me out.

RM: Did you hit him back?

JC: Yes, I did.

RM: And, how did you hit him back?

JC: I hit him with a round house with my right hand, it would be in the left side of his face.

RM: Do you know whereabouts on the left side of his face?

JC: Huh uh, not exactly, but I know I hit him in his face.

RM: Okay.

KPP: Okay. Uh, the other thing I wanted to ask you about is, uh, in one of your earlier statements you talked about how you had uh, entered the car.

JC: Uh huh

KPP: And, uh, could you, uh

JC: It was a thin piece of wire, well not real thin, but a coat hanger, it was pretty thin, and I just picked the lock and went through it, and then I was only in the car momentarily before the man got me.

KPP: Could you try and describe that wire to us a little better.

0001034

TR. RED TAPED INTERVIEW GHQ #8900672
CROUS. JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 6

JC: It was a piece of, it was uh, uh a piece of coat hanger wire and it had a hook on the end of it, so I could hook onto a lock so that, whatever, to go up through, or open the door from the outside, or whatever

KPP: Okay.

JC: It had a little hook on the end of it, and uh, the last I remember it, I rolled it up, I put it in my back pocket right after I opened the door, I had it in my back pocket, uh, uh. I had it in property when I was staying at the Monterey because I always carried it when I went out at night. And, one time at, um, one night after I went out driving around, after I was living with Penny, I threw it on the floor, threw it in a box that I had sitting there. It was obtained, but I guess the wire wasn't there.

KPP: Okay. Uh, okay, now, that was just a metal wire, then?

JC: Yeah, a dark piece of wire

KPP: It was just dark colored, that you remember?

JC: Uh huh.

KPP: Okay. It didn't have any other painted color, it wasn't a

JC: No.

KPP: White or anything like that?

JC: No.

KPP: Okay. Uh, okay, another thing I wanted to ask you about is the sheath. Uh, you told us in another statement that there was another sheath, uh, that you had used the knife to uh, carry the knife in and that it was possibly in Nancy Smith's property.

JC: Yes.

KPP: We didn't find it there, uh, where else could this be?

JC: Nanc, Nancy Smith obtained other stuff out of my room when she moved out of my, out of the house.

0001035

TR. UNRECORDED TAPED INTERVIEW GHQ #8900672
CROUS JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 7

KPP: Okay, and you're sure there is another sheath, then?

JC: Yes, I'm positive, 100 per cent positive there's another, another sheath. If it ain't in there, Nancy Smith told me that she's had, she has some stuff of mine still. But, at the same time, when Nancy Smith was taking that, she took some other stuff out of the house that didn't belong to me nor her.

KPP: Okay, is it, the last time we asked, now, uh, whose knives are these?

JC: Mine.

KPP: Okay. How long have they been yours?

JC: Quite awhile. Since right after I got out. I got out December 4th, 1988.

KPP: And, all the sheaths are yours, too?

JC: Yes.

KPP: Okay. Uh, now, I asked you again also, uh, about before ...what about the phone calls?

JC: I called my brother that night, and, um, I can't exactly remember if I put it on, on, uh, I think as I think back, I think it's on uh, the bill at the Monterey Apartments.

KPP: Okay

JC: 'Cuz I was asked twice about a couple of phone calls from me

KPP: So, who would know about those, possibly?

JC: Floyd Bunn or, uh, Debbie Hollopeter.

KPP: And, that's the only place you might have billed it to, then?

JC: Uh huh, yes.

KPP: Could it have been anywhere else?

0001038

TR TUBED TAPED INTERVIEW GHQ #8900672
CROU JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 8

JC: No, unless, uh, I thought I was out, I thought I called collect that night, but maybe I didn't. I can't ... 'cuz Debbie asked me while, while I was, uh, after my, uh, uh Floyd Bunn let me go as night manager at the, uh, Monterey, she called me up and asked me about a couple of phone calls.

RM: If you billed that number to the, that, that phone call, to the Monterey, what number would you have billed it to?

JC: 588- , I can't remember it, now. 8909? Something like that? I believe that's the number, but I can't exactly remember the phone number there.

KPP: And, that's the only place you think of that you might have billed it to?

JC: Yeah, 'cuz I wouldn't have billed it no place else. Unless I call collect, billed it there, and that's it. I didn't pay for it, 'cuz I didn't have money. I know that. I think I had 75 cents.

KPP: Yeah, earlier you said Penny Fox, possibly.

JC: Yeah, but I, I wasn't even living with Penny at that time.

KPP: Okay.

RM: You first met Penny

JC: After her newspaper article came out

RM: And that was on

JC: That was in January, lat, latter part of January.

RM: I believe it was January 29th.

KPP: Okay

JC: I can't remember.

RM: Okay.

0001037

TR BED TAPED INTERVIEW GHQ #8900672
CROUL, JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 9

KPP: Okay, uh, I think

RM: The, the phone call that you made that night was to your brother?

JC: Uh huh.

RM: Do you remember what you talked about?

JC: No.

RM: It was a short conversation,

JC: Yeah, and later on after, after my, uh, investigation here, the first investigation I had, I called my brother and told my brother that I killed a man and that I was getting ready to go on a run and I would be in Denver, Colorado and I wouldn't have no contact with my family for awhile.

RM: Did you in fact stop calling then?

JC: I called () every once in awhile, not very often.

RM: () calls, so the phone calls wouldn't have been as frequent?

JC: No, 'cuz there for awhile I was calling my family all over quite a bit, quite a bit.

KPP: Okay. I did come up with something else I wanted to ask you, now. Lucinda Cooley, is that Cindy Lou?

JC: Yes.

KPP: Uh, you said that you had made some statements to her in another statement you gave us.

JC: She woke up, one morning I woke up and she said you talked a lot in your sleep last night, 'cuz she was who I was living with at that time.

KPP: Okay.

JC: Whether she remembers it, 'cuz I know she's a alcoholic and drinks Thunderbird and

0001038

TR. IBED TAPED INTERVIEW GHQ #8900672
CROL JOHN LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 10

RM: Okay, and all that.

JC: 'cuz she was, she was mad because I moved out on her and I wouldn't, was living with another woman, and the other woman got mad 'cuz I was after another woman, and

RM: So, prior to you telling me in this room, uh, that you were responsible for this stabbing death,

JC: Uh huh,

RM: the only other person that heard, or the only people that you had told about this were, was who?

JC: My brother, Larry Crouse, that lives in Malcolm, Nebraska.

RM: Okay.

JC: 'Cuz I told him that I killed a man and I was gonna take off and go to Denver.

RM: Okay. Did you tell him who you'd killed?

JC: No.

RM: Did you tell him it was somebody in the Corrections Division?

JC: Yeah, but that was it. I didn't tell him who it was. I said a big guy in corrections.

RM: Okay.

KPP: Can you think of anything else you want to ask him?

RM: Not at this time. Uh,

KPP: Okay.

RM: I think that'll do it. Have you got any questions you want to ask us?

JC: I just want to get it over with.

0001039

TA JED TAPED INTERVIEW GHQ #8900672
CROUS. OHN-LEE DOB 06-14-57
04-13-89, 3:00 PM
Page 11

RM: Okay.

JC: I'm tired of the head trips, and I've put you guys through it and I've put myself through it, and I just can't, ... I had to, I had, I had to come over here today and say, hey this is what it is. Let's get it over with, do what's gotta be done so I can go on. No promises, or nothing have been made to me in any of my interviews over here or nothing.

KPP: Okay.

RM: Okay.

KPP: The time right now, it looks like, uh, thirteen minutes after 3:00. I'll be turning the tape off.

KPP: Kenneth P. Pecyna, Detective, Oregon State Police

RM: Randy Martinak, Attorney General's Office

JC: John Lee Crouse

ct/04-14-89

0001040

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I directed the Appellant's Excerpts of Record Volumes I, II, III, IV, V, VI, & VII to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman

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No. 19-35427

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK E. GABLE,

Petitioner-Appellee,

v.

MAX WILLIAMS,

Respondent-Appellant.

APPELLANT'S EXCERPTS OF RECORD VOLUME VI

Appeal from the United States District Court
for the District of Oregon

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APPELLANT'S EXCERPTS OF RECORD VOLUME VI

Pursuant to Circuit Rule 30-1.7, appellant submits the following Appellant's Excerpts of Record, as indexed below.

INDEX

<u>Clerk's Docket #</u>	<u>Document</u>	<u>E.R. #</u>
34-3 through 34-4	Exhibit 179–81, continued (reports of Crouse interviews)	1089

Incident Number 89-2454 Page 1 of 94
Connect Number 89-00672 3P
Incident Type Murder Date/Time 06/15/89
Statement of Johnny Lee Crouse D.O.B. 06/14/57
Home Address Oregon State Penitentiary
Location Statement Taken _____

I, _____ make the following statement to _____
who has advised me of my rights which are as follows: I have the right to remain absolutely
silent. Anything I do say can and will be used against me in a court of law. I have a right
to consult an attorney before making any statement. If I am without funds, I have a right to
a court attorney at public expense. I have a right to have my attorney present when and if I
do make any statement. I have the right to interrupt the conversation at any time. Anything
I do say must be freely and voluntarily said.

I understand these rights: _____ I do have questions about my rights: _____

Understanding these rights, I am now freely and voluntarily choosing to make the following
statement _____ (initial).

TM: Okay, to begin with I want to, uh, state that there is a
tape recorder on in the room and that the time now is 1112
hours, 06/15/89. And maybe we could just kind of introduce
so we know, um, who's in the room and, uh, acknowledge that
we're all aware that there's a tape recorder on. And then I
want to go through a rights card too. I'm Tom Mason from
the Salem Police Department and John Crouse, is that cor-
rect?

JC: Yes.

SG: And I'm Steve Gorham. I'm an attorney. I'm representing
Mr. Crouse.

MB: And I'm Mark Brownlee. I'm an attorney from the Public
Defender's Office.

DP: Dale Penn, Marion County District Attorney.

SM: And I'm Sara Moore, Deputy District Attorney.

TM: Okay John before we, uh, uh, talk at all today, I want to go
through a rights card with you. And if at any time you have
any questions or you want to speak to, uh, either of your
attorneys, uh, at, you know, you need to let us know.

HAVE READ THE FOREGOING STATEMENT AND DECLARE THAT IT IS TRUE AND ACCURATE TO THE BEST OF
MY INFORMATION AND BELIEF.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

TM: But first of all it is my duty to warn you before you make any statement that you have a right to remain absolutely silent. Anything you do say can and will be used against you in a court of law. You have a right to consult an attorney before making any, any statement. If you are without funds, you have a right to a court-appointed attorney at public expense. You have a right to have your attorney present when and if you do make any statement. You have the right to inter, interrupt the conversation at any time. And anything you do say must be freely and voluntarily said. Do you understand these?

JC: Yes.

TM: Do you have any questions about your rights?

JC: No.

TM: Okay. I'm going to take a moment here and date and time this. This is the card I just read you. If you would look it over and I ask you to sign it if you understand it.

SG: You let me know if your stop -- mine stops. I'll let you know if yours stops.

TM: Okay.

DP: I guess another thing to clarify is that, um, I'm here today because, uh, I was contacted by your lawyer that you wanted to speak with me. And, um, so that's why we made arrangements to set up this meeting. But, um, at this time we haven't made any promises. We haven't made any deals. We haven't -- there's, there's nothing out on the table. This is just an opportunity for you to provide information to us and for us to talk. That's the way I understand it. And if you understand something different then we need to clarify that.

JC: Well my, my, uh, -- Mr. Gorham talked to you before you all came in here about what I talked to him about. And he's, uh, told me that I could either call off the meeting today and wait or go ahead and deal with you on my own with him present. So I told him that I'd do that.

DP: Okay.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 2

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: And you know -- you already understand what I'm after. I'm asking for an immunity.

DP: Uh huh.

JC: I'm asking for eight hours out of the penitentiary. And I'm asking to be transferred.

DP: Uh huh.

JC: Not knowing if you can do any of that.

DP: Okay. And I'm, and I'm simply saying that I'm not making any promises at this point. And that's all I can say at this time.

JC: The reason, the reason -- at, at first you asked for certain people to be in here, uh, Martinek, Glover, and Peceyna, which I, I decline on having in here. I asked for Mason. Mason's name came up so I asked for Mason. Um, um, I did that on the, uh, on the fact that, um, Mason talked to me first on the investigation in February -- on February 17th, is that right?

TM: Close.

JC: Right around, right around in there?

TM: Yeah.

JC: That, um, as for my, um, being taken back to, uh, O.S.P., I had the other ones working on the case and I didn't want them involved in it right now with my, with my interview with you. Um, I asked for the meeting so it was voluntary. I guess paper work had to be presented to you from my attorney saying that this was involuntary. Now the peoples' name that I'm going to mention, the reason I didn't want the other investigators in here is because they have contacts at O.S.P. I'm not saying that I know if any of you guys do or not. That's the chance I'm going to take, right?

And I'll start it by simply telling you I did eight years in the penitentiary the first time I was down for robbery one and robbery two. I was paroled December 4. Before I was paroled while I was in the institution, I had many, many of,

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 3

0001047

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

uh, staff members with brass and power come up to me, asked me to set up inmates and specific guards for payment. Just before I got out of the institution I was asked by a pacific -- specific staff if I'd do something for money after I got out. I told him no, I didn't want involved in nothing. And after I got out I was reapproached again by the same person. And I told him no. I don't want nothing to do with anything that you have to talk to me about. So this went on for awhile and --

DP: Who was this person who contacted you and wanted you to do something?

JC: Arminicus (sic). He's the security manager I believe right now at the O.S.P. Matter of fact he's a head of the -- almost anything that goes on in there.

DP: Okay.

JC: And while I was back he asked me -- I was in, I was in S.M.U. when I first went back. Um, --

DP: You're talking about when your parole was revoked --

JC: Yeah.

DP: -- this last time?

JC: Yeah.

DP: Okay.

JC: Alright. Um, then I was put in to administrative segregation by Moss. And after I was down there a couple days, they both come up to my cell and said, "Do you need anything?" That, "We're going to deal with you on a very professional level." Alright. Then, um, word came back to me that, um, my officers that worked there that I get along with, that there's no ties between just a personal friendship situation. They told me, "John you got to look out for yourself; not because something was said that you're in jeopardy now." Right. And since I been back they both -- I've been pulled out of my cell off and on. And Moss and Arminicus had a private interview with me on a weekend and says, "Look, you're in a catch 22 right now and you're going

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 4

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

to play our ball game." And I told 'em, "No. I'm not playing your ball game, that you're going to play mine before it's all over with. And he says, "You, you don't have nothing on me. And I just, I didn't say nothing. So I started dealing with Brownlee, uh, writ. And I asked for this meeting. Right. The reason I went out of the institution for the fact that the two people that I'm going to bring up -- I could bring up more people that have all the pie in that penitentiary -- can get anything done they want done by inmates or staff. The two are Moss and Arminicus.

Um, I have -- the reason I asked for a little time out of the penitentiary was to contact two other inmates that I haven't had no contact with. Since I've been locked up I haven't had nobody go see. That, um, was also approached and, um, -- while I was on -- while I was out Arminicus told me, "How would you like to make a bunch of money in one whack?" And I looked at him and I says, "I don't think I want involved in any of it." And he says, "Well I can put the heat on you in other ways." And I told him no because I didn't want involved in it. And, um, prior to the Michael Francke killing, Moss and Arminicus was about to lose their jobs anyway for the simple fact of the multi-million dollar scandal that they have going on in the institution for the racketeering crimes, the drug smu -- drug smuggling and so forth.

Now some other people I have to contact with -- and I put it down as my, um, as one of the agreements that you view as appropriate before you came in here, that I'd have Mason with me while I talked to this guy. Alright. This guy can tell me or you, it doesn't matter -- Mason, exactly everything that was said to me by Arminicus 'cause he was there. Arminicus says, "Look, here's a chance for you to make ten to twenty thousand dollars." He says, "I think you can do it." And he said it involves Francke. So right there I'm piecing things together on my own while I've been in the institution. Why would Moss and Arminicus tell, tell somebody -- I was something they can trust, that they have to get rid of Cross. And that was just said to me yesterday. That he knows something and we can't, we can't afford to have him going -- right.

DP: Okay who, who told you that yesterday?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 5

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: An officer. He asked me not to say his name until certain times come up.

TM: Okay. Why don't we, uh, go back -- is that basically --

JC: There is more to it but, um, I'm -- actually the thing is that, um, I was asked simply while I was in the penitentiary by Moss and Arminicus before I got out if I'd do an inmate in.

TM: Okay. That's what I want to go back to and get to the specifics about what they're asking you to do. Okay. When, when roughly was that -- in time?

JC: When they first, first approached me to help them out in the institution? That was back in 82.

TM: Okay. He didn't have that position then did he?

JC: No.

TM: Okay. In 82 who approached you?

JC: Um, one of the officers, uh, Hammon.

TM: Okay. He approached you and asked you to do what?

JC: To help. If I'd help him stop the drug smuggling coming in certain ways; and that if I'd help set certain inmates up.

DP: When you say "set 'em up," um, what does that mean?

JC: They offered to give me the drugs to set the inmates up. Whether it's just drugs or whether it's a bullet, or whether -- whatever it may be of how bad they want this individual that, um, they told me they supply me with whatever I needed to, to where they could get this guy put in the hole or whatever the circumstances may be.

DP: You said that they came to you and said they wanted you to help 'em set somebody up to stop the, the drug smuggling. How would that --

JC: See one inmate, one inmate pacific (sic) that I know of that the name was mentioned to me -- Townley -- John P. Townley

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 6

001030

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

at the penitentiary. They knew that him and I associated quite a bit. They knew I had -- I, I made a lot of associates in the penitentiary and so forth. They knew how I carried myself so they figured well here's a guy that we can probably put trust in, right. Matter of fact I had, uh, right on a desk when I went in to talk to one of 'em one day, they had over three ounces of weeds -- said, "There it is. You can take it and do what -- and we'll put the money on your books." Plus they had given me cigarettes. I had run of the penitentiary at any time I wanted it with no questions asked. And it didn't matter what guard was on, all I had to do was ask, "Get, get out of my cell." Um, um, one of the officers that works, works over there -- both, both of the officers -- three -- let's see, there was, uh, -- I don't know if you know Forbes. It's Captain Forbes now. Um, uh, and there was Thalman. He works over there still. Has nothing to do with me now. And one other guy -- I can't think of his name. He still works over there. And they were the three guys that approached me most of the time on, on help, helping them. They'd come and ask me who had the drugs. Ask me pacific (sic) names and all that. Um, --

TM: The three you're talking about are Hammond, Forbes and Thalman?

JC: Thalman and, um, um, -- there was a couple others. I can't remember their names right off hand. Then, um, prior to me getting out I went back out to population before I got released on, on terminal leave. Then, uh, um, Hammond come up to me and says, "You want to make a hundred dollars cash?" He says, "I just went to -- I want you to put this knife in a guy's side." Then, um, --

TM: Did you do that?

JC: No. Then the next day, uh, uh, Arminicus called me and says, "Will you do this?" And I told him, "Look, I'm not letting you set me up in any way." Then just be -- prior to me getting out on the 4th he says -- I believe it was right around the first of December. He said, "Do you want to make some money?" He says that, uh, -- he didn't go into pacif, pacifics (sic) about anything. He just said Moss asked me to talk to you.

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 7

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

TM: Okay. Who, who's cell was it they wanted the knife to go into?

JC: I can't think -- it was up on five tier. The guy, the guy's already out.

TM: Okay. Why? Did he tell you why he wanted --

JC: Personal grudges.

TM: Okay. What, uh, what specifically did, uh, Arminicus -- when he called you in, what, what did he say?

JC: He says, he says, "You're getting ready to get out, right? And I told him yeah. I said, "I get out -- I was suppose to get out the fourth." And he says, "Look," he says, "you don't have nothing when you get out." He says, "You want to make a bunch of money?" He says, "I can pay you half now or half when the job's done." And I told him no I wanted to get out and lead a clean life. And he got all pissed off at me. And, um, a few times when, when I was in that (inaudible) he would talk to me and, uh, he'd get real pissed off at me and go out slamming the doors, uh, stuff like that.

TM: What did he want you to do for that money?

JC: He, he wanted me to set up other inmates. Whether, whether it'd be by the drugs or whether it'd be --

TM: Yeah, but on -- when you were getting out on the fourth you couldn't do that.

JC: He, he, he told me, he says, "I'll see you when -- right after you get out." He said, "I'll contact you." Then he came over to the Monterey twice to talk to me -- him and two other guys.

TM: Who were they?

JC: I don't know who they was.

TM: You didn't see 'em there? Somebody told you they came?

JC: Yeah.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Revised 10 Feb 75

Page 8

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

TM: Who, who told you they were there?

JC: Uh, Debbie.

TM: Okay. The, uh, clerk there?

JC: Yeah.

TM: When was that roughly?

JC: That was right in January -- about the first of January. Around the 12th or so of January.

TM: Did, did she know that that's who that was? Did he leave a card or something or did --

JC: No. I've seen him leaving as I was coming back in.

TM: Okay.

JC: Because it was right after I got off of work.

TM: So she said that that same person had been there more than once or what?

JC: Yeah.

TM: And you didn't recognize the two guys that were with him?

JC: No.

TM: Okay.

DP: He didn't see you coming up?

JC: No. He was going out as I was coming around the corner. And I just seen him and I avoided him. Because I lived in apartment 206 at the time. As it -- when I seen him before that I told him, I says, "Why don't you just let me alone and let me do, let me do my parole so I can get on whatever I have to do." Then, um, a few days later when -- the next day I seen a friend of mine. He's an ex-con. That -- he told me that he was approached by, uh, by, um, a staff member. And, uh, then, uh, he told me little details that,

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 9

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

uh, -- I'd like to contact him so he could tell you guys what he -- what was said to him.

TM: Who, who was that inmate?

JC: His name is David Dell.

TM: Dell?

JC: Yeah.

TM: When did he go out?

JC: He went out two days after I went out.

TM: So sometime -- the 6th then?

JC: Yeah. Then, uh, --

TM: Is it Dill or Dell?

JC: Dell.

TM: Okay.

JC: Then, um, --

TM: And he was approached by, uh, staff.

JC: Yeah.

TM: Do you know which staff?

RLS? JC: No. See after my first investigation with you, I got in contact with him and he was suppose to meet me the night that I got arrested. That's what I was doing at the Chumaree because I told him I'd meet him at the Chumaree.

TM: Okay. I guess I'm still confused a little bit why, uh, Arminicus would want to talk to you on the outside to set up inmates if -- I mean on the outside if --

JC: It wasn't inmates that he wanted me to set up.

TM: Okay, what'd he want then?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 10

0001054

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: See he told me, he says, "You still want to make that money?" You know, and I said, "What's it --

TM: Was that inside or outside?

JC: That was outside.

TM: So he did talk to you on the outside.

JC: Yeah.

TM: Where was that at?

JC: That was down town.

TM: Just on the street?

JC: Yeah. 'Cause I ran into him when I was walking down there. He says, "You still want to make that money?" He said, "It'll put you good on your feet." And I said, "Look," I said, "what, what is this -- all this about?" He says, "There's a guy I need to, I need you to take care of." And I says, "Who?" And then, uh, he slipped and said it was Francke. And I told him no I --

- TM: Why do you say he slipped?

JC: Because he, he tried to avoid my cer -- question that I was trying to answer him. Then, uh, he just said Francke. And I didn't say nothing to the question. I just turned and walked away. Then, um, when I came back this time and they put me in ad seg and I had my interview with him down there, he says, "What do you," he says, "what have you said?" I said, "I ain't said nothing." He says, "Have you said anything about our conversation?" I said, "Look, I ain't said nothing to nobody." Then staff members are telling me that I just best look out for my own ass. 'Cause he told me at that time -- he says, "You know too much what goes on in this penitentiary with inmates and staff."

DP: This is when you came back that's what he said?

JC: Yeah.

TM: That's in April.

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 11

0001055

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: No that was just last month.

TM: When you came back and you -- okay, but I mean -- yeah.

JC: Since I been back. And one officer that works down in that seg, he tells me a lot that's being said by the staff members and the brass and all that.

TM: Who's that?

JC: I don't want ta say.

TM: How would he know? Is he privy to the staff? Is he somebody close to the staff meetings or something?

JC: One of 'em is. And the other one, he just listens to what other staff members say. The guy has been working over there 20 -- over twenty some years ain't going to come up to me that I've been getting along with for eight years and tell me a bunch of shit. Especially when he, when he goes in my house and makes sure that everything's alright in my house to cover my own ass.

TM: So he's somebody that works down with you quite a bit.

JC: Yeah.

TM: You see come down.

JC: He talks to me and all that.

TM: Um, do you know any other, uh, person that Arminicus has approached personally -- and he himself to do anything?

JC: Yeah.

TM: You said staff approached Dell but, uh, was that Arminicus that approached him or was that --

JC: I, I have no idea because I wasn't able to finish my conversation with him.

TM: Okay. Who, who else?

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 12

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: Another guy by the name of Richards. He was on the streets. There's a guy that's in the penitentiary right now -- Ernie Aires, that was in ^{Cal} that seg that went out to population that, uh, Arminicus asked him to set up, set up Green.

TM: Jeff?

JC: Yeah.

TM: Aires? Uh, what's Richard's first name or is that a first name?

See 37 JC: That's his first name. I don't know his last name.

TM: When did he go out?

JC: He went out in November.

TM: Okay. And what specifically was asked of him?

JC: Same thing that was asked of me.

TM: Okay. What's, uh, -- was he inside the walls quite a bit?

JC: He was in about five years.

TM: Okay. Do you know where he went out to?

JC: Here in Salem 'cause I seen him a couple times just hit and miss.

TM: Was he living at the Monterey or --

JC: No.

TM: What, um, -- was he on temp or --

JC: He was on parole.

TM: Parole? Okay. How old a guy is he?

JC: About 35.

TM: And, uh, do you know what he went in for?

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 13

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: Huh uh.

TM: Or where from?

JC: From Marion County. Staff members shook my house down on a Sunday night not too long ago. Told me that Moss ordered a shake down at eleven o'clock at night. I was shook -- my house was shook down last night at 3:30 also. I seen the five guards come down. I had everything written out to bring over here. I didn't want guards to get ahold of it so I flushed it. 'Cause when they shake my house down they go through and read all my mail -- which my mail has been read going out and going in to me to anybody I, I communicate with on the outside.

TM: And they came in what time -- 3:30?

JC: 3:30.

TM: Last night?

JC: Yeah.

TM: And a Sunday night -- you mean just past or --

JC: Yeah.

TM: Okay.

JC: They shaken my house down quite a bit. In fact I don't even keep nothing in my cell. Why would a staff member come up to me and say that a conversation happened between Moss and somebody else saying that we have to get rid of Crouse? And every since I've been down, down in administrative segregation, I've had officers tell me that they're going to try to set me up. Either by staff or other inmates.

TM: Well I guess, you know, you've, uh, mentioned to us that, uh, uh, Arminicus asked you to do, uh, --

And he's --
JC: At least him and Moss are tighter than anybody I know -- any corrections that I know of.

TM: Did he, did he ask or tell you how he wanted, uh, Mr. Francke done?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 14

001000

Statement Continuation

Case #89-2454

Statement of John Crouse Date _____

JC: No.

TM: Do you know if he asked anyone else to do that?

JC: Yeah. The two people I need to contact.

TM: Okay.

JC: It ain't going to do -- the thing is the reason I asked for the time out with you is that if you go to these two guys they're going to run. Free and simple. And that, and that's before I get a chance to say, "Look, this is what, this is what I've done but I need your help too."

TM: Are you, uh, willing to tell us who those two are? I mean they would run anyway so it wouldn't do us much good to, uh, run 'em down. But on the other hand at least it would give us an idea to do a little background so we'd know a little something about 'em that would help us.

JC: It's them two guys I've done mentioned to you.

TM: Okay. Mr. Dells and --

JC: Richard. I don't know his last name. I just know where he's, where he's at most of the time. I don't know the address. I don't know Salem that well.

TM: Okay. How, uh, --

DP: Particularly if we were going to say oh, eight hours see if we don't know how -- if you don't know how to contact them, how would we be able to run 'em down other than go hang out where you think he'd be.

JC: Well see the people that he knows that I would just have to ask and say, "Where's this guy at?" And they simply say well he's either here or here. That's how I contact most of the people I know anyway just by contacts they have. And they usually know where he's at. Eight hours -- I wouldn't probably -- I asked for eight hours in case something popped up that--I probably wouldn't even need eight hours.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 15

9001059

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

TM: Of course there isn't too many people on the street when you, got a cop on your heel, uh, that's going to tell you where, uh, --

JC: I'm not too worried about it. 'Cause most of the people I deal with are straight laced anyway.

DP: Did you ever have a conversation with Moss?

JC: I had a conversation with Moss when I came back this time.

DP: Okay but about setting up inmates or, um, what you'd set up Francke or --

JC: Moss came to me and asked me to set up a certain, certain guard.

DP: Who was that? Tell us about that.

JC: Okay. There's a guard that works over there now. His name's McCallister that they want him fired because he's putting heat on 'em. And Moss came to me and says, "Set this, set this officer up. Put it on tape, put it on anything you can so where I can get this guy fired." And I told him, "Look," I says, "I'm already being investigated on the Michael Francke murder." And I says, "I want nothing more." And he says, "Well it's your choice." Says, "If you change your mind about anything that you want to do," he says, "you contact me." And he said, "I'll come up here and talk to you at any time." Then when they got, when they found out that I wasn't going to do nothing for them when I came back, they put me in ~~the~~ seg they said for security reasons. Which I ain't violating no security, no security over at the penitentiary. And matter of fact I have the kite that I wrote to him. I put simply in the kite that I felt that he was trying to set me up and that's it. Which at the time down in ad seg they brought James LaMore over here. And James LaMore told 'em something. They brought, uh, a guy by the name of Pappy Alexander or something like that over here. They, um, -- stuff like that. And they have me on the same tier with 'em. And I had the guards telling me, "Look, this is how many kites are going in on you every day." I've read a kite to where Pappy Alexander said that I told him verbally that I was going to kill him. Which I ain't said nothing to the guy.

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 16

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

DP: Wouldn't that be a reason to ^{put} but you in ad seg if we got inmates out saying stuff about you

END OF TAPE 1, SIDE 1

TM: The tape is turned over. The time is 11:43, 06/15/89.

DP: And I, I guess what I was asking you was, uh, there's been a lot of publicity about you. There's been stuff all over the inside I'm sure about you. And, and if other inmates are saying, "Well John Crouse has done this or he's done that," wouldn't that be a reason just for your own safety to put you in ad seg?

JC: Why would they do --

DP: From administration's point of view.

JC: Um, why would they put me down there shortly after they bring a guy over here that was my friend for two-and-a-half years. They can't bring a guy over here now unless I know about it. There's not a kite that don't go in that I don't know about.

TM: That's 'cause staff's telling you?

JC: Yeah. Staff feels, feels -- certain staff over there feel that Moss and Arminicus is going to set me up one way or another.

TM: Why?

JC: Because, since I've been back I've simply told Moss and Arminicus to take a flying --

TM: Yeah but why, why would you as opposed to, uh, any number of long-time inmates? I mean why --

JC: I'm not the only inmate they ask to do this. There's other inmates that do it over there every day. Plain and simple, every day. People that don't have family on the streets, people that want a TV, people that want a radio, people that want canteen.

TM: Like who? Give me a for instance.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 17

74
6
10
10
6
6

See
5/30
letter
Pg 2

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: I can't tell you all of 'em.

TM: Uh huh, just tell me one.

JC: One was Ernie Aires. One was, uh, uh, --

TM: What did Ernie Aires do?

JC: Del -- one was, uh, uh, uh, let's see, one was another one --
- uh, John Martinez. Um, --

TM: Okay. Okay now let's go back to Ernie Aires. What did he
exactly do? What did staff ask him to do and what did he
do?

JC: They asked, they asked Ernie Aires to set, uh, Green up.

TM: To set Jeff Green up?

JC: Right. Arminicus at that time handed Ernie Aires two
cartons of cigarettes.

TM: Okay. What, what did, uh, Ernie do?

JC: Ernie didn't take the cigarettes.

DP: What did they want him to do?

JC: See Jeff Green --

DP: I mean specifically how set him up?

JC: Jeff, Jeff Green runs one -- is one of the big drug dealers
over there.

TM: Uh huh.

JC: Alright. That, um, they ain't been able to bust anything on
him -- on Jeff Green. All they know is he gets it in and he
distributes it.

TM: Okay.

JC: They wanted to catch Jeff Green with some, uh, heroin on
him. How much I don't know.

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 18

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

001063

TM: Okay. So what was Ernie suppose to do?

JC: Simply -- to give him the heroin.

TM: Okay. Did they give him heroin to --

JC: No. They was going to.

TM: But they didn't.

JC: No. Matter of fact Ernie Aires was fighting that, fighting that and he got his attorney with him. Turned the guy you talked to yesterday. 'Cause see, me and Ernie was in ad seg bef -- I was in ad seg before. Um, and when I was down there, Ernie Aires seen, seen me get pulled out the -- pulled out of there day and night. That -- while I was down in ad seg I ru -- and I had run of the tier, when I asked for something I got it. Didn't matter what it was -- whether I didn't have no money or not I still had cigarettes I was smoking. I had a radio. If I didn't like one radio I asked for a different one, they'd give me another one.

TM: The staff?

JC: Yeah.

TM: So what were you doing for them to have them do that?

JC: I wasn't doing nothing.

TM: They were just doing this for nothing in return?

JC: Yeah. See, 'cause they had pulled me out and asked me about certain inmates down there.

TM: Would you tell 'em?

JC: No.

TM: And yet they were --

JC: I just told 'em -- I just simply told 'em, "I'll find out. I'll let you know."

TM: And then they'd give you cigarettes and radio?

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 19

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

9901064

JC: Yeah.

TM: And you'd never tell 'em?

JC: I told 'em on three occasions and that was it.

TM: Okay. Who, who were those? Uh, who were you telling on those three?

JC: I just know the guy by the name of Max Warren.

TM: Max Warren? He's one of the officers?

JC: No.

TM: He was an inmate?

JC: Yeah.

TM: Oh, okay. But who was the officer you told?

JC: Um, Forbes.

TM: Okay.

DP: Forbes asked ^{you} about Warren?

JC: Yeah.

DP: What, what was it that he wanted to know on Warren?

JC: You see there's certain people over there they don't like, alright. Um, Warren, Warren's one, um, heaven know -- I don't know his name but he's in ^{that} seg right now -- that they just simply don't like. ^{that} click -- that hangs around with, uh, Jeff Green and all them. That's the people they don't like. That's the people they try to set up to get put in the hole because they're big wigs and, uh, they pressurize people and all that.

TM: So, uh, what did -- did you do something to Max Warren to get him put in --

JC: No.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 20

Statement Continuation

Case # 9-2454

Statement of John Crouse

Date _____

0001065

TM: You just said that he was -- what, drugs at that time or something?

JC: They asked me if he was getting narcotics down there. I said, "Yeah, he's getting some." 'Cause see --

TM: Did you tell 'em when he actually had 'em there so they could bust him or --

JC: No. 'Cause you never knew when they was coming or going. Um, the -- I went over to Lt. Leavitt. They asked me to set up -- I can't think of the guy. I just know him by Tinker. I went over to Lt. Leavitt. They asked me to set this inmate up. Asked me -- then asked me to set the inmate up. He said, "What do you know about the inmate?" I, I pulled out three \$50 bags of, uh, crank and threw on, on his desk. He said, "I know." That's when I got paid by him. And I did nothing -- no disciplinary got done to me or nothing.

TM: And that was about inmate Tinker?

JC: Yeah.

TM: You know him as Tinker. You don't know his --

JC: (Inaudible) something.

TM: Okay. Okay. Well obviously, uh, this is stuff that's valuable but, uh, the bottom line is what is, uh, still back to the Michael Francke case. Uh, what exactly else can you tell us about that?

JC: Okay, Moss and Arminicus don't want to lose their jobs. Plain and simple. They'd go to any, any length to keep their jobs.

TM: Okay.

JC: Michael Francke was getting ready to fire 'em. Once they found out, a few days later Michael Francke was dead.

TM: How do you know personally that that was -- he was getting ready to fire 'em?

JC: I had a guard tell me that while I was on the streets.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 21

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

0001066

TM: Who told you that?

JC: Mack McCallister told me that.

TM: Mike?

JC: Mark, uh, Mack.

TM: Mack.

JC: Yeah.

TM: Yeah.

JC: He told me that because I called him from the streets into the institution. I call him every now and then and talk to him.

TM: And he told you --

JC: That, um, Francke's getting -- that Moss and Arminicus and somebody else is about ready to lose their jobs, and that Francke was going to put somebody else in their positions.

TM: When did he tell you that?

JC: That was in -- right in January.

TM: Before he was killed or af --

JC: Before Francke was killed. And just a couple days later Francke was kill -- found dead.

TM: And, uh, and McCallister told you this? You called him at the institution?

JC: Yeah.

TM: And he was on duty or something.

JC: Yeah.

TM: And just in a passing conversation he mentioned this.

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 22

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

9901067

JC: Yeah, when we was talking on the phone. I asked him how things were going because, uh, um, Arminicus has it out for McCallister right now. Uh, McCallister's got a bunch of stuff going on I guess against Arminicus.

TM: What, what rank is this McCallister guy?

JC: Just a C.O.

TM: Okay.

JC: Somebody I can confide in as an officer and not worry -- that I don't have to worry about it going to anybody else. And which he confides in me. Talks about a lot of things.

TM: Okay. What else do you know?

JC: That's it until I can get ahold of the other guys.

TM: Okay. What, uh, what specific part did you play in Michael Francke's death?

JC: I didn't play no part.

TM: What -- um, I guess what concerns me, and, you know, I talked to you once, but, uh, -- and I've read some of the other things that, uh, you've said since then. I guess what bothers me is, you know, why should we believe this time.

JC: That, that's your choice. That's you're -- that's the shot you gotta take.

TM: What, what, uh, -- I guess, you know, to help us show that, uh, that, uh, this one is true. Well what can you --

JC: I'll tell you what, I'll tell you what, you give me eight hours on that street and if I can't come up with nothing you can take it any way you want. You can get an indictment to try to charge me with the Michael Francke murder or give me eight hours to prove it. Just like I told you at Portland when I walked out.

TM: What, uh, --

JC: We could all -- it's just as plain as --

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 23

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

TM: What in eight hours could you prove?

JC: I bet I can come to you with plain facts.

TM: Well --

JC: Plain facts and other inmates that was involved. It's been said something too.

TM: Well, yeah, but being said something to and actually having them leading to the solution of this murder or, or --

JC: I can ask -- it wouldn't matter if I did it in eight hours, it wouldn't matter if I did it in 48 hours. I'm not, I'm not stupid. And it's not hard to piece things together with the people I know in Salem. When I got stopped -- the night I got stopped, when I told you, when I told your partner I'd bring the guy that killed Michael Francke to you -- I told your partner that --

TM: I don't remember.

JC: -- when he took me back. That's when Peceyna got in my face and I told, I told your partner that I had to get out of here 'cause me and Peceyna almost got in a fight.

TM: Uh huh.

JC: Alright?

TM: Okay. I didn't know about that. But, okay.

JC: Yeah. And I told him at that time I said, "Don't worry, I'll bring the guy in here that did in Francke, and all it's going to do is take me a little time." The night I got arrested I was on to it."

TM: What were you on to that night?

JC: I was getting ahold of a partner that heard something and I was going to take a lead to. The guy that killed Michael Francke is still right here in this town.

TM: And who was that?

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 24

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: I, I don't know his name. If I told you his na -- if I, if I knew the name I'd tell you the name. The case would be solved.

TM: Who can tell us?

DP: *[Pause]*
Is there somebody you know that can tell us the name?

JC: *[Pause]*
Yeah there is but I'm not going to say right now.

DP: Why not?

JC: *[Pause]*
And that -- I'll talk that over with my attorneys first thing in the morning. I'll let them decide whether I should say more or gone on.

DP: Well you want to talk to 'em right now? I mean -- or tell me why you can't, can't tell me or what do you want to do? Because we're interested in knowing who killed Mike Francke.

JC: Everybody is.

DP: Well it's our job and that's why we're interested in it. And --

JC: That's right, it is your job. Alright.

DP: Uh huh.

JC: Everybody knows that I know something. The polygraph people say it. It's been said from the first time I've come in here -- that I know something. That's right, I do know something. And if I continue on and said well I know this guy, this guy, this guy until -- I don't want to say the guy's name until I'm, I'm -- I know it is a fact.

DP: Okay. I don't want you to tell us what you think or what you've heard. I guess I want to know what you know.

JC: True fact, Moss and Arminicus come to me and asked me to kill Michael Francke for \$10,000. When I denied it they said, "Well we'd just get somebody else."

DP: Okay.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 25

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: They approached the other two friends that I mentioned. Alright.

DP: Uh huh.

JC: Until I talked to them -- alright, they know more of the person that did in Francke -- from what I know. That's why I need to get ahold of the two guys to let 'em know what -- I have to clear my own ass of something I didn't do.

TM: What -- when did Moss and Arminicus approach you?

JC: That was in January.

TM: And were they together when they did it?

JC: Yes.

TM: And where was that?

JC: Right down there just, just outside of the penitentiary right there.

TM: Was that prearranged?

JC: Yeah. They said they wanted to see me about something. So I came -- walked down here and I seen --

TM: How did they get ahold of you?

JC: Through, uh, another -- through my P.O.

TM: Time out. Oh. Through your P.O.?

JC: Yeah.

TM: And, uh, who was your P.O. then?

JC: Um, Stan Groom.

TM: Okay. So this -- and one or the other of them contacted Groom. And, and what did Groom tell you?

JC: He just said, "These guys would like to see you for a minute." And I said, "Where?" He said, "Out by the peni-

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 26

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

tentiary." Right there they had a brief case with \$10,000 cash in it.

TM: Okay. When, uh, when did -- how did Groom get ahold of you?

JC: When I went in to see him.

TM: Okay. You don't know how many days before that.

JC: No.

TM: Okay. And where did he tell you, uh, to meet 'em?

JC: Outside the penitentiary.

TM: Where?

JC: By the laundry mat over there by Plaid Pantry.

TM: Okay. And what time were you to meet 'em?

JC: I met 'em at 8:30 at night.

TM: Okay. Uh, what, uh, -- you go alone?

JC: Yeah.

TM: Was there instructions about that?

JC: I just -- they just -- I just went by myself. I wasn't running with nobody at that time.

TM: Okay. And, uh, who was, uh, present? Just them?

JC: Yes.

TM: Okay. Were they there in a state car or their own cars or -

JC: Their personal car.

TM: Two of 'em in the same car? What kind a car was that?

JC: Let me think.

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 27

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

TM: Light/dark?

JC: A dark car. And they said, they said, "Do you want to make \$10,000? I said, "For what?" They said, "Kill Michael Francke."

TM: Did, did they talk to you outside the car or inside?

JC: I was outside the car.

TM: Did they get out of the car?

JC: Uh, no. They sat right there. I just looked in on the window 'cause one of 'em popped a brief case up and said, "Here's \$10,000 cash right here. Do you want it? You take it. And this is what we want you to do." And I said, "No." I said, "Get lost." And I turned around and I walked off.

TM: And specifically who, who asked you to do what?

JC: Arminicus did all the talking.

TM: Moss didn't say anything.

JC: He just looked at me with a smile on his face.

TM: Okay. And specifically again, what do you remember him saying?

JC: He said, "Would you like --," he said, "We have \$10,000 cash here John. This is what we would like done and we feel that your the man that can complete it." And I told 'em no.

DP: Um, I'd like you to maybe go back to Stan Groom telling you that Moss and Arminicus want to meet you and tell us what you did and what you saw, what you heard. Okay? Without us asking you how many people -- all that stuff. Just tell us what happened.

JC: I went in to see my P.O., Stan Groom. He says, he said, "I was contacted by these two people -- Moss and Arminicus. They would like to have -- like to talk to you about something."

DP: Uh huh.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 28

001072

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: I said, "Okay." I said, "Where is it at?" And they told me to meet 'em here on a Wednesday night. I can't remember the date, by the Plaid Pantry by the penitentiary. So I went -- when I approached the car, I looked in and I seen who it was. Well I -- what I did, I stood up by the laundry mat. And these guys said, "Are you John Crouse?" And I went over to the window and I said, "Yes." And I recognized who they were right off the jump suit. It was Moss and Arminicus. Then at that time they said, "Would you like to make \$10,000?" And I said, "For what?" And they said, "To kill Michael Francke." They said, "Any way you want to." And I said, "No I don't want no part." And turned and walked away. That was it. And I went on about my way.

DP: Now when you got back inside you said Moss came and talked to you. But he didn't talk about meeting at the laundromat.

JC: Didn't say nothing.

DP: Okay, and so has Moss ever said anything to you about Michael Francke since the murder?

JC: He told me, he says, "You best not say nothing."

DP: When was that would you say?

JC: That's when I was -- that's, that's after he found out that I was getting -- I was coming over here and being investigated. He didn't know what the reason was I was coming over here. All he knew that I was being investigated by the state police. He didn't know whether -- nobody knew, um, what the reasons was that I was coming over here. Arminicus was in hysterics for over a month behind it -- so was Moss. Moss and Arminicus begged me not to talk to the papers.

DP: Um, okay. I want you to -- you told us about your conversations with Moss and now you're telling us about another meeting. And I want to talk about what's happened since you've been sent back to the penitentiary. When you've met with Moss and what he's told you; and when you've met with Arminicus and what he's told you. I mean all your conversations, okay? 'Cause it, it, um, -- we spent maybe twenty minutes talking about your conversations with 'em and then you didn't tell us about this other meeting. And now we

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 29

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

have this meeting. We need to, we need to know what your conversations were with Moss.

JC: The simple fact, the simple fact is -- you guys are asking me for something, right? Is that I know -- I asked for something too.

DP: Uh huh. Well -- and I'll tell you, um, I want to solve this case but I want the truth. And, um, at this point, um, I understand your concerns about safety. They're my concerns. Um, I don't want anyone who's ever given information to help me in, in a case, uh, be hurt or injured. Um, and I've made -- taken steps in the past to make sure that didn't happen. Um, right now what you've told me is that there's been some conversations. Um, no one has personally threatened you though at this time. Is that right?

JC: I've had inmates come up and threaten me.

DP: Okay. But that'd be one reason why the administration would need to put you in ad seg isn't it -- if inmates have threatened you.

JC: The inmates are down on ad seg.

DP: Okay. But, um, at least that's one place that access to you could be controlled at least.

JC: By inmates.

DP: Well you haven't -- has, has there been any, um, -- other than the shake-downs that you told us about, what else has happened to you in ad seg that's, uh, that you consider to be wrong or inappropriate?

JC: Things the guards say.

DP: Okay. And what kinds of things?

JC: To where I have Thalman works nights over there and threatens me every day.

DP: And what does he say?

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 30

0001074

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: And when I go out to see my attorney when he comes in after two o'clock, and I go out there and he's always trying to get me to turn to say something to him. Right.

DP: Uh huh.

JC: Last Friday he told me, he said, "There's nothing more than I want to do than kick your ass." And I was on the tier. And I set my tray on the top and I says, "You want a piece of my ass?" And I said, "Here it is, come and get it." I said, "But you guys," I says, "I know what's happening." I says, "You're working for Moss and Arminicus right now." I said, "They're afraid that I'm going to tell Dale Penn what I know -- that they know I know."

DP: Uh huh.

JC: I says, "Nobody knew about the conversation until it came out in the papers." The reason I told a certain party that I was going to have a conversation with you was to see the reactions that I got -- that the administration was going to do. And I got the reactions I was looking for.

DP: What reaction?

JC: Of how, how much pressure they was going to try to lay down on me.

DP: And what was that -- this pressure?

JC: They told -- why would Moss and Arminicus tell the inmate, "We got dupe -- we got to get rid of Crouse." When they came into my house last night, I didn't think it was shaking my house down, I was looking at 'em kicking my ass and no body know it. Just like five years ago when they hung an inmate in the hole that had handcuffs on. They said he hung himself. That's bullshit.

TM: Which inmate did they tell that they would do this to you?

JC: Bumper.

TM: Bumper? Who's Bumper?

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 31

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

JC: He's one of the strong arms over there. Matter of fact it's an inmate they hate.

TM: And he told you they were going to --

JC: They said, "Something serious is going to happen to you real bad."

DP: What was the name of the guard again that you told me? Thalman?

JC: Yeah.

DP: Okay, Thalman is, uh, -- at least made discouraging comments or something to you.

JC: They want me to go off, plain and simple, to where they can get me in the hole. Without a reason to put me in the hole, they can't put me in the hole unless I give 'em that reason. So they have this guard doing everything that he can to torment me to try to -- call me a homosexual, to talk bad about my girlfriend, um, my family, um, um, he tore two of my letters up right in front of my cell from my family to try to get me to reach out and grab him. Which I just smiled and said, "Well the letter's not that important to me." That I, I told him, I said, "I know what the game is and it's not going to work."

DP: Okay, Thalman has, has harassed you, I guess, basically. What else? You've told us about the two shake-downs. What else have they done?

JC: They got inmates, they got inmates they'd call out and talk to. Asked if I said anything to the inmates. Which I haven't said anything to the inmates about anything. I have two inmates over there I can trust with anything I say. I'm not worried about 'em. Um, I -- uh, matter of fact, they look out for me. When I'm not -- when they pulled me out of my cell to shake my cell down, I have one guy's got a mirror looking right over there.

DP: Have you had any write-ups?

JC: No.

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 32

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

DP: Okay.

JC: Can't write, can't write nobody up without a, without no reason to write 'em up.

DP: Okay. Anything else that --

JC: See, I have to be extra cautious of every move I make.

DP: Okay.

JC: Um, one inmate over there every day says I've walked up to him and says I'm going to kill him. An inmate I don't even talk to.

DP: The inmate walks up to you and says he's going to kill you?

JC: No he tells the staff that I walk up to him and says stuff.

DP: I see. Okay.

TM: Who's that?

JC: Peppy.

TM: Who's he? What's his name?

JC: Alexander, something like that.

DP: Why would he say that?

JC: Because he wants to transfer.

DP: Um, --

JC: So then they get these other inmates to try to talk to me and I won't simply -- I won't talk to 'em simply fact, right. Um, --

DP: No I understand, I understand your concern. Um, and you know you've talked to the police several times. And you've told us three, four, five different stories. Um, what is it -- I want to go back to Detective Mason's question because it's real important about, um, what we can do. We have to know what the truth is. What is it about this that we can

Witnessed _____

Signed _____

Witnessed _____

Date _____

Revised 10 Feb 75

Page 33

2461666

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

corroborate, that we can establish to show that this is the truth. What can you tell us --

JC: I guess --

DP: Another person, um, something.

JC: I guess a lot of it is that, um, I'm asking for your trust. You know. Sure I know what I've said and I know what I haven't said. So I guess it's now me and you and who sits here.

DP: Uh huh.

JC: That's where the trust has got to come from. Either you're going to put it in me or you're not or -- you know.

DP: Well from your perspective, why should I trust you?

JC: You don't have no reason to. It's just like my perspective why should I come in here and say well I'll tell you this. And how do I know that you can get this done. I don't know that. It's a two-way street. I don't know that you can get anything done. I don't know if you have contacts at the penitentiary but the two people I have done mentioned or anybody -- I don't know that.

TM: So basically other than trust there, uh, isn't anything that we can just go out and corroborate what you're telling us now, is that correct?

JC: I asked for the time out with you to put it together. That's simply why I say let me have Mason and the eight hours.

DP: When you say --

TM: Is that because I look like I'm a slow runner? (Laughs.) Sorry.

JC: Bullets can out run me buddy.

DP: You're talking about -- well, um, Moss and Arminicus want to save their jobs; and you've been told by people they're going to be fired but this really came back to multi-million

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 34

Statement Continuation

Case #89-2454

Statement of John Crouse

Date _____

dollars in drugs. Um, what's that about? Multi-million dollars in drugs.

JC: They get a percentage of the drug -- they have certain ways of letting certain drugs in by simply telling guards this is the way it goes. They got more pull over there than, than the judge downtown's got. What they say has got to go. If it doesn't go they go. Doesn't matter who it is.

DP: Okay, I guess what I'm asking is do you have any specific information? I mean people, times, shipments, anything that would establish, um, Arminicus and Moss in the drug trade?

JC: How come Arminicus has had drugs laying right out on his desk when he'd call an inmate in there and try to set somebody up.

DP: Okay. Well that, that's one thing. You've told us about that. What other things could you tell us?

JC: I've seen, I've seen cash handed right out to inmates. I don't mean just a little cash neither.

TM: Personally witnessed it?

JC: Yeah.

TM: Between who?

JC: Well there's me an another inmate.

TM: Who received the cash?

JC: Well it was coming from Arminicus, and it was the other inmate. The other inmate's already gone because he committed suicide on an overdose.

TM: Who was that?

END OF TAPE #1, SIDE #2

Witnessed _____ Signed _____
Witnessed _____ Date _____

Revised 10 Feb 75

Page 35

Statement Continuation Case #

Statement of Johnny Lee Crouse

TAPE 2 / SIDE 1
Case #89-2454
Continuation

5321080

TM: It's a new tape, the time now is 1214 hours, 06/15/89. I guess my question was why were you present with this --

JC: That was at the time when they was asking me to help set up inmates.

TM: So both that inmate and you were present?

JC: Yeah.

TM: Did he ask you in front of this other inmate to set up the -

JC: Yeah. The other inmate was helping, he told me that I could work with him.

TM: How did he get a - commit suicide?

SG: It's an overdose.

RK: I think it's time for a break.

TM: Okay, the time now is 1215 hours.

TM: The tape recorder is back on, the time is 1240 hours, 06/15/89, uh, same persons present in the room.

DP: John we wanted to try to get some additional kind of description of Richard's, uh, Richard, ~~had~~ told us Richards originally and uh! *you*

JC: While you was out Gorham said you wanted a name, I gave them the name. All right I am going to ask for two hours out with Gorham, with a Mason and Kennicott today and I am not going to run I've got no reason to run. Either I'm here to help solve the case or I'm not here at all, right, and when my two hours - two and one-half hours are up by the time you leave work tonight I'll guarantee to arrest warrant for the person that killed Michael Francke. *You'll have an*

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 36

Statement Continuation Case #

Statement of Johnny Lee Crouse

DP: And how would you - and how would two hours accomplish that?
It's your choice.

JC: Have to work fast.

TM: Where would we have to go?

JC: ~~It would~~ be right here in Salem.

DP: I just don't see how it can happen today, uh, and I'm not saying no, it's just we have to clear it with his department, uh, we had to pull a lot of strings just to be able to have Detective Mason be here this morning which we've gone almost the afternoon, I don't have any authorization whatsoever for him to work on this this afternoon and I don't see that that can happen today, uh, I'd like to keep exploring it, um, and we want to get as much information about the case as we can, uh, and we'd like to get the name too, I mean the name obviously would help us, but, uh, that's why were here.

TM: What would particularly help us like in Richard's case just to verify that such a person exists, you know, it's not going to do us to try to - any good to try to contact him 'cause you said he'd run anyway and very likely he would, he's out of the system but if we can verify that, hey, this person exists that helps us realize that what you're saying is, uh, got some veracity to it, some truthfulness to it, you know, there's a lot of guys probably that were released with the first name of Richard or the last name of Richard, I'm not even sure which, which way it was, is it his first name or last?

See 13 JC: It's his last name.

TM: It's his last name, okay. And, uh, how about, you said-- how - maybe you could just give me a basic rundown on his description or his - something that would set him apart from somebody else.

JC: He's - he's about 6'3", he's got long blond hair, brown eyes, muscular build.

TM: How heavy is he?

Witnessed _____

Witnessed _____

Signed _____

Date _____

Page 37

Statement Continuation Case #

Statement of Johnny Lee Crouse

001032

JC: About 190, 100-- between 190 and 200 pounds.

TM: Facial hair?

JC: Mustache.

TM: With long blond hair, how long is long?

JC: About the middle of his back.

TM: Did he ever, uh, do you know where he lived here in town at any time?

JC: He was just staying one place to another with friend.

TM: Did anybody like - oh okay, never like at the Monterey or someplace?

JC: Oh he'd stay a night there, nights someplace else --

TM: Okay.

JC: He was always on the move.

TM: When did you think he was paroled roughly?

JC: In November he was out before I was.

TM: You don't know any monikers for him, nicknames, if you saw what would you call him?

JC: Just Richard.

TM: Okay, but that, that you say is his last name.

JC: Yeah.

TM: How long do you think he served?

JC: Did a few years.

TM: Was he there before you or after?

JC: After, after I got there.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 38

Statement Continuation Case #

Statement of Johnny Lee Crouse

CS
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SG: I - I guess - I guess we're done I think unless John wants to continue. I - I - thinking back we could take him out today if you wanted to take him out today if this is important enough we could do that - I'm not going to accept that statement, Dale, that it's because he doesn't have authorization from his department.

DP: Well that in fact is true --

SG: That - that maybe --

DP: -- and I want it clearly established --

-- true but I don't think -

SG: I personally don't think that if this is important enough that you couldn't call his boss which is Riley I need him this afternoon and I mean - maybe that's true maybe you couldn't do that but I think that simple thing could be done and I'm not convinced that couldn't be done, I mean if it's important enough I think it could be done, maybe it has to be done in the future because of the bureaucracy but if it's that part just doesn't seem to be something that could not happen.

DP: We are still in a situation where we're here to get information as truthful and we need to know truthful information and that's why we have questions and we've asked for clarification and we have not gotten complete disclosure and I'm not here to make deals up front without knowing what the information is and that's why we need to have information even why we sit here this morning we've gotten bits and pieces and fill-in and changes, we need to know the truth and that's what we're asking for and so that's why we ask for clarification, I mean the name, I haven't heard any reason why we can't be given the name today.

SG: Well it's pretty obvious - if it's not obvious why, I mean if, if in fact John gives you a name what do you need him for anymore, you've made no deals, you've basically gotten information that may or may not be true, may or may not lead you to the actual killer of this person that you're investigating and you have given this individual nothing.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 39

1001084

Statement Continuation Case #

Statement of Johnny Lee Crouse

DP: Okay.

SG: That's why we're here you've told us he's got nothing, there's nothing on the table, there's no deals and you're asking him to just spill his guts completely and - and have nothing for it, that just doesn't make sense to me and I'm sure that doesn't make sense to a lot of people and that's probably not making sense to him.

DP: Well --

SG: I mean I understand - I think I understand everybody's concerns but I mean to answer your question directly why you're not getting a name I think that's pretty obvious.

DP: No it isn't obvious to me. What do you mean obvious? That he --

SG: Well I guess - I guess - you have made no deal, no offer, no nothing and you want him to give you information, a particular information that if it's true, solves your case and you've made no deal.

DP: Okay let me tell you.

SG: If you want to make a deal then that makes some sense for him to give you that information.

DP: Okay. Let me say that a name didn't solve a case at all, it gives direction in an investigation, sure doesn't solve a case, we have to have evidence and, uh, what we're talking about is bargaining for testimony or further assistance, I always have to know what the information is first before I can establish what I can do. One thing I know that Mr. Crouse has been approached about already by the Francke family is that there's a \$23,000 reward there.

JC: I don't give a shit about the money.

DP: But that's one thing that --

JC: They can take that money and burn it as far as I'm concerned, I didn't come over here for the money.

~~DP~~ ^{JP} ^{JC} Well, the money's no concern of mine, I come over here with

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 40

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Signed _____
Date _____

Signed _____
Date _____

Statement Continuation Case #

Statement of Johnny Lee Crouse

DP: No I haven't talked to you about it. Tell me, why should I believe this story --

JC: You don't have, you don't have to believe nothing, all you have to do is go on, on what you already know and try to get an indictment and take me to court and prove-- get me on first degree murder, that's all you have to do.

DP: Fine, that's fine. Do you want to - you want to give us some information about where you were on January 17th, I read in the papers some things you said about it, but we're just here to get information and we want to know the truth and you're saying that your confession is a lie, fine, give us something to go on that this is the truth rather than just say let me out of prison and I'll help you solve it, (inaudible)

JC: I didn't say let me out of prison, did I? I didn't say let me out of prison, there's not one thing in my first agreement that said let me out of prison, is there?

DP: No, you're saying that you won't talk to us anymore right now unless we let you out this afternoon, that's what I'm hearing.

JC: I didn't say that.

SG: In custody let's remember that, okay.

JC: I'm not asking to be turned out free.

DP: Well, so where are we at, can you give us anymore information here or help us out, help us decide that this is truthful information as opposed to something else you've told us?

JC: This is what you have to take, either you can take what I have given you as truthful from me to you and these guys right here beside me, I ain't talked to my attorneys about nothing that I was going to say here today, not one thing.

DP: Well, that still doesn't help us decide that this information is truthful, does it? I mean it's something you told us, we need something that we can check out, that we can verify, if you want us to trust you, that's what you want me

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 42

Statement Continuation Case #

Statement of Johnny Lee Crouse

2010037

to do is you want me to trust you, that's what you've asked for and what I keep asking you that for --

JC: It's the same - it's the same thing, all right, I asked for something, I asked for something, there's nothing laid on the table for me, not a thing, why should I give you all the information, I'm back over in the (inaudible) and that's it, you got what you wanted, fuck him, we don't need him no more, we got what we want.

DP: Okay, so what are you telling me that you want?

JC: I already told you, I need this time out and by the time you get off work tonight you know who the man would be. Yeah, I know who the man was that did the murder, plain and simple.

DP: How do you know that?

TM: Well you - without saying, you know, were you a witness?

JC: I was asked by that individual be involved in ^{it} to watch his ass.

DP: So you witnessed it?

JC: No I didn't witness it, I know exactly what happened to the knife that was used and everything, you'll never find the knife that was used.

DP: Okay, and why, then why do you know this person did it? They ask-- somebody asked you to help them out, but how do you know they actually did it?

JC: I seen the money, I associated with this guy a lot, not just on one occasion, not only one or two occasions, a lot of occasions.

DP: Okay, did he tell you that he did it?

JC: Yeah, plain out, why did he come to me after everything was happening, said John I need drugs, his whole life changed after everything happened.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 43

0001083

Statement Continuation Case #

Statement of Johnny Lee Crouse

TM: Where were you when he did it, were you there pretty close, what were you doing when he did that, did you know he was doing that.

JC: I was around there - I was around there, yeah, I was - I was right there on Center Street the night of the 17th.

TM: Did you know he was doing it that night, I mean did he tell you in advance that this was the night?

JC: He said - he said I need some help on the 17th, he said I have \$10,000 to kill Michael Francke. It wasn't -- there -- wasn't no pacific (sic) thing said --

TM: Did he tell you --

JC: I got to the Monterey, I got to the Monterey after I went some place else, the guy came over to me, the guy was nervous, and said get me out of town for a couple of days, I took him out of town.

TM: That night?

JC: Yeah, that night.

DP: Okay, did he tell you where he got the \$10,000?

JC: Yeah.

DP: Where did he get it?

JC: He told me he got it from Francke, uh, Moss and Ormetikus.

DP: Okay, why won't we find the knife? Where is it?

JC: The knife was grinded down after it was all over with.

DP: Where at?

JC: In the shop in a garage.

TM: Whose garage?

JC: I'm not saying the name.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 44

Statement Continuation Case #

Statement of Johnny Lee Crouse

TM: Were - were you present when it was done?

JC: Was I?

TM: Present?

JC: No, I seen the shaft of the knife.

TM: How do you know that --

JC: *the handle of*
The knife --

TM: How do you know that was the knife? He told you that?

JC: Yeah.

DP: Okay, let's - let's just take this a little forward this afternoon, we let you out for 2 hours, uh, you come back and tell us the name, so what? How - that doesn't solve this case, that doesn't mean that I can do one thing with that information yet, does it, because what you told me is that you - you're not a witness, someone told you something, so for me to use that information I'm going to have to call you as a witness and I'm going to have to have some other kind of corroboration about this individual, I - I assume this guy isn't going to come in and confess and admit it to me --

JC: And I'm telling you right now, I don't want the \$22,000 reward --

DP: Okay --

JC: I'm not after --

DP: -- forget about the reward money --

JC: -- right?

DP: I'm exploring the idea of letting you out this afternoon, how is that going to solve this case, because what you're telling me so far is someone told you about it, okay, all that does is mean that you got to be a witness to what they told you.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Statement Continuation Case #

Statement of Johnny Lee Crouse

000111

JC: If I bring to you, if I bring you the clothes that the man had on that night --

DP: (Indicated yes).

JC: Yeah, I know where the clothes are.

DP: Okay, well that's something.

JC: All right if I bring you the clothes and say here now you take your bloody sample there is the clothes that was used that night that belonged to this individual, the knife was grinded down --

DP: Okay.

JC: -- and this is the person and the persons name.

DP: Okay.

TM: Would you take us to where the knife was ground down?

JC: Well you'd - you'd end-up going to the house anyway when you arrested the guy and if I have to take the stand against the guy I'll take the stand.

TM: How about the knife hilt you were talking about, *you ever talk to him about* where is it?

JC: I can't say, I don't know where it's at, --

TM: Oh, okay.

JC: -- I can't say exactly where - what the guy did with that, I know what happened with the clothes.

TM: If we walked out of here right now where would we go first?

JC: I - I'd go see two people.

TM: And you know that they would be somewhere right now?

JC: I'd just have to check, that's the chances I'd have to take.

TM: Where would we have to go to see them?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 46

Statement Continuation Case #

Statement of Johnny Lee Crouse

160100

JC: It would be right here in town.

TM: Okay, but where?

JC: A couple, be, one would be over in - over off of 17th Street and Nebraska - off of Nebraska and a couple of others, I don't know the streets all here in town all I know is how to get to them and that's it.

DP: So --

JC: And I know - and I know what I told them previous and all that, I'm telling you and I can bring you the clothes that was used with the blood on it and the person they belonged to, I can't bring you the knife, 'cause I told you what happened to it.

DP: (Indicated yes). Well what else, umm, so we may be able to get the clothes, why haven't the clothes disappeared at this point?

JC: - People act different in anything they do, you know.

DP: Okay, but, but I mean you've been locked up for awhile, how do you know the clothes are still around.

JC: I'm not saying that I know, I know where they was.

DP: Oh, okay.

JC: Right?

DP: Okay. So maybe we - you could take us to where the clothes should be, you could tell us the name, umm, and you can tell us what this person told you, uh, are there other people this person's told this about, told - told them about?

JC: No, the guy, the guy, uh, him uh, him and I was pretty good friends so - and I trusted him and he trusted me, a lot of things happening while he was out and while I was out that he would talk to me about and confidentiality that I wouldn't tell nobody else, I ain't wrote the guy, I ain't did nothing, they have copies of every letter I wrote, coming and going.

Witnessed _____
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Date _____

Statement Continuation Case #

Statement of Johnny Lee Crouse

DP: Okay. Why is it that you need to go out to do this and why is that so important to you because what you tell me now is you can probably show us the spot and we can go over and get the clothes, give us the name and we can go over there and do a search warrant and search the guy's house and stuff, why is it you need to go out to do this now, 'cause - you're telling me that - that you got testimony yourself, what this guy's giving you plus you know these spots, we don't need to go - we can do this anytime, contact those other two guys, but why is it that you need to do that.

JC: There are the two guys I need to back my story, I ain't had no contact with them since I've been locked up, the same people Moss and ~~Ormetikus~~ *Arminikus* tried to talk to.

DP: Okay, --

JC: Before going to the other person --

DP: Okay, but I mean, uh, why do you need to do that outside? What if we brought them in here to talk to you?

JC: You can try it.

DP: Okay, well I mean, that - that's a - that's a little more --

JC: I know what you're thinking --

DP: -- acceptable kind of thing.

JC: -- I know what you're thinking, here I am asking for this time that I'm going to try to run.

DP: Well I don't know, I don't know, it's just that - it's a, it's a - unusual kind of thing.

JC: I have to clear my name with something too, that's all this is about, I'm clearing my name.

TM: The only reason we have your name John is you gave it to us, I mean you're the one that put you in this, not us.

JC: Yeah but I didn't ask for all the publicity neither.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 48

Statement Continuation Case #

Statement of Johnny Lee Crouse

001093

DP: Well we haven't given your name to anybody in publicity and you - you can see that I have never said anything about you, uh, in any of this stuff, but regardless how - about the publicity, you know, we want to know, we want to have the evidence and we want to know who did it and we want to know how it transpired and I'm just trying to explore ways that are kind of more mainstreamed rather than saying well let's put you out on the street for some period of time, that's - that's one of them erratical ideas and sometimes they can happen but I'm trying to think of ways that we can accomplish what you want and what I want so maybe one way is you can tell us about where to go to these places, we can go get these people and bring them here and talk to them so that we don't have the problem of taking you out places and maybe we can work out some things like that and we ~~would~~ accomplish what you want and accomplish what I want and we don't have to have these kind of strange circumstances that are real unusual.

TM: ~~It's~~ ⁷the bottom line John is the press knows we're here doing this today it was in today's paper, uh, if something happened while you were out, you know my department isn't going to be real thrilled about, uh, me traipsing around out there, uh, uh, under these circumstances, suppose the miraculous happens and, and uh, you know, you're gone, that's a lot of heat, there is a lot of reasons that the system is not going to be, uh, uh, thrilled about and the system being those people that watch us, one of which is the paper and everybody else, I mean we're willing to take some chances but, uh, we've got to be able to justify it when we do.

SG: I don't think it will help.

DP: Now I understand what you're saying and I know, uh, I just think there's the ability to get this accomplished for both of us and if there's something else that you needed that you wanted to do while you're out, well let's put it on the table, let's see what we can do to have that accomplished but maybe, maybe we can accomplish what we both want and, uh, I don't have to - to go into such an unusual situation, bringing you over here is unusual, I mean going out in the community is real unusual.

Witnessed _____

Witnessed _____

Signed _____

Date _____

Page 49

Statement Continuation Case #

Statement of Johnny Lee Crouse

SG: We need another break.

TM: Okay.

DP: All right.

TM: The time now is 1307, 06/15/89.

TM: The tape recorder is back on, the time now is 1326, 06/15/89, uh, the same people present except Sarah Moore from the D.A.'s Office is not.

DP: John I'm real interested in exploring how, you know, we both can get accomplished what we want to accomplish and I think --

SG: Well now I'm out of tape - oh Tom you're a nice person. Go ahead.

DP: I think we can say that, uh, I can probably get authorization, although I haven't talked to Tom's Chief yet, I would have to do that, uh, and I hope he would be cooperative but, uh, for you and Detective Mason and probably Mr. Kennicott, *To* go out and, uh, uh, specifically I guess what I would want you to do first is to, uh, attempt to get these clothes and, uh, what I would - what I would propose is that I have some backup cars, they wouldn't be with you, you wouldn't be involved with them but backup security for Detective Mason uh - and we go do that and then we explore whatever else we can do today, I am real concerned about having you go out to interview witnesses and I would rather do what we can to locate these people and then bring them here to talk with you and we'll do whatever we can to make sure the surroundings are not, you know, police custodial surroundings, but that is the concern I have.

JC: Uh, the reason I asked for it to be the way that I asked is that these guys are both on parole you see --

DP: Both what?

JC: Both these guys are on parole that I liked to talk to --

DP: Okay.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 50

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Statement Continuation Case #

Statement of Johnny Lee Crouse

JC: All right, and say they took off on a run and knowing that they told me some stuff that they ain't told nobody else, right, and say they go on a run and they get violated I am still at OSP, right --

DP: (Indicated yes).

JC: I'd rather do it this way to tell them, look, nothing's going to happen to you guys --

[End Tape Side 1, Tape 2]

TM: The tape was turned over, the time is 1330 hours.

JC: This - this - this is the point I'm trying to bring out is to let them know - hey these guys come and talk to you and go on and do with it and tell them, you know, that nothing will happen, I - I don't think nothing will, you know, personally that uh, all you guys wanted is what they was told the same as I was told and that I don't want them guys taking off running being scared that something's going to happen to them thinking they are involved in the Michael Francke murder.

DP: Sure.

JC: That's why I asked for the time off, not for me to try to - just to try to say hey this is what I have done I put a - matter of fact I'll carry a tape on me if that's what's necessary and you guys have what I say to them and what they say to me and if that's so I'll just tell them, look when - when can you meet with these guys, give me a time, give me a date and this is when it would take place.

DP: Well I - I think we can work on that and - if we can find these people maybe, you know, that's - it can be worked out, uh, I guess I am the most concerned about how we do that contact, uh, but I'm prepared to, uh, go ahead this afternoon, I have to get clearance from Salem Police Department but at least begin this process and, and I'd like to - to do first the clothes, simply because that's something that doesn't involve other people, at least I think, now I don't know, is this - do we have to go into a house, do we have to get permission from somebody or --

JC: No.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Statement Continuation Case #

Statement of Johnny Lee Crouse

TM: Is it on public property?

JC: Yeah.

TM: Okay.

JC: You see, see that's why I requested, that's why I said I'd like my own set of clothes without handcuffs and the shackles, that way people surrounding any place I went nobody would suspect nothing, everybody knows blue shirt and blue pants, handcuffs and stuff you know, uh, --

TM: Well can we drive up pretty close to where it is?

JC: You got to walk a little ways, it won't kill you to walk.

TM: Well what I'm - I'm not concerned about the walk, I'm concerned more about how much in the public view you're going to be.

JC: I won't be --

TM: Okay.

JC: -- very much at all.

DP: This is real important, I mean this question about is this public property, private property, it becomes very important ownership of this property, whether or not I got to go out and get a search warrant for us to do this, uh, --

JC: No, don't need a search warrant.

TM: Okay so it's just vacant property basically.

JC: Yeah.

TM: Okay.

That - the normal public has access to.

JC: (Indicated yes).

Okay.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 52

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Statement Continuation Case #

Statement of Johnny Lee Crouse

DP: Okay, how about, uh, well I'm prepared to do this I guess, uh, this initially, how about the idea of where this grinder shop is located and who this person is, not for us take action on this person because as I told you, getting a name, we have a lot more to do than just get a name and there's a lot of other things that have to take place but, uh, can we do that today, at least to be able to find out where this is and, and see, uh, 'cause we'd have to - we'd probably want to do search warrants and that kind of stuff to be able to - to get into this, this place and look at this grinder and I don't know what other potential evidence might be available there, you'd have to tell us, but, uh, those are two things we can do pretty quickly, I mean just get that information, then we can see what we can do with these two people that you want to at least calm their concerns and I think that's valid, uh, so can we proceed along those lines today? I suppose we need to have someone get you lunch or you haven't had lunch, have you?

JC: No what do you think --

DP: I need to check with his boss before --

SG: Why don't you start to do that.

DP: Okay.

SG: You don't need us around do 'ya?

DP: No. Did I, uh, you have anything you wanted to --

TM: Those were the two main things, you know, I think if we could do both, go by both those places and, uh, get those pointed out that would give us some -- checking we could do.

JC: My main - my concern is and I expressed this, all right, now I talked to my attorney, I told you what I - I requested what I would like, right, so I guess a lot of it is just my word, trusting my word and me trusting your word, right?

SG: I think what he's about to say is basically his concern - I think we'll be - appear to be that - obviously the clothes doesn't - don't seem to be a problem at least but I think the concern about the grinder and showing you the place or giving you the name is as soon as that is divulged --

Witnessed _____

Witnessed _____

Signed _____

Date _____

Page 53

Statement Continuation Case #

Statement of Johnny Lee Crouse

DP: Okay --

SG: And I think before - before he really wants to do that I think he wants to know ^{that} if he's not going back to the penitentiary.

DP: Okay. Let me say that today I'm not, uh, uh, we're not going to take any action about this place until, uh, you know, we would have some kind of change in your circumstances so you felt safe and I don't think that we'd be in a position to do anything today with us and we won't, uh, before we do anything with that, uh, I'll make sure that we have, uh, before we take action on this place or this person we'll make sure that you and your lawyers are satisfied about your safety, and we can do that, but I - I guess I don't - I want to move forward as much as we can and, uh, it's going to take us some time before we're going to be able to do anything with ^{name} anyway.

TM: We can do some, you know, background checking without anybody ever knowing, by background I don't mean knocking on doors, you know, sitting down doing some research on people without anybody ever knowing we're doing it and, uh, that would be the kind of thing we'd do first.

SG: Okay, start to work.

TM: Okay. I'll shut the tape off, the time now is 1336.

TM: The tape's on, 1441 hours.

SG: We are basically discussing the way to arrange this so that he's in belly chains, handcuffs and leg chains and --

DP: We've got a - we've got a coat over him so that the belly chain isn't visible.

SG: Again - I guess the belly chain and - and the handcuffs don't bother me as much as the leg chains - if he's out in public the leg chains are just going to be like waving a red flag and I think - I find it not acceptable and I think Mr. Crouse finds that unacceptable.

DP: Yeah. The difficulty is, is that he is presently in maximum security custody and for us to even be taking him out is

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 54

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Statement Continuation Case #

Statement of Johnny Lee Crouse

660100

difficult but we have accomplished that; to now say you want to reduce the amount of custody, at least that Kennicott's been ordered to use which is normal custody for transport - uh and to take it --

JC: I had them off - I had them off when you took me over to the Dome Building, the same kind of orders.

[Several talk at once.]

DP: Okay, now, how many police officers were present?

JC: Four.

DP: Okay, and, uh, then are we going to - are we going to have - can we bring in the OSP guys to have four or five OSP guys walk with you 'cause I mean that's kind of where it's at. We've tried to make as many concessions as possible, that's why Detective Mason and Mr. Kennicott are taking you in the car to take you out to this place but you're still a maximum security prisoner and that's the difficulty we have.

SG: Well, and I understand that difficulty but as he said he has gone other places under the same orders and not had the same conditions (inaudible)

DP: Except that then we had, uh, greatly increased security.

SG: You had more officers but let's remember you got a Salem P.D. person, a top security person from the Oregon State Penitentiary, you're going to have him followed by undercover police officers --

DP: We're just in a situation - what is it - what is it that you want to accomplish with no leg irons on.

SG: ^{So that} He's over there - he's not an obvious prisoner walking - if he has to walk out into a field to help you find something, that it's - he's not obviously a prisoner doing that.

DP: Okay, and there will be nothing about his clothes that are going to tip off that he's a prisoner and leg irons - if you're in a - if you're talking about standing in that field right across the street as we look out the window, there's

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 55

Statement Continuation Case #

Statement of Johnny Lee Crouse

no way - if there's any grass whatsoever there's no way you can see those leg chains anyway, they're very minimal.

SG: I'm going to leave it to Mr. Crouse, I mean it's not up to me and - but I don't think that he's being unreasonable and I don't think that it's something that can't be done.

DP: Well it constitutes violating custody policies.

SG: ~~They're~~ ^{Where are} probably violated every day.

DP: I can't speak about that but this - what is the concern --

SG: ~~I betcha~~ ^{What is the} if Mr. Kennicott was going to be honest with us he could probably tell us.

RK: Yes Mr. Gorham I have had experience with transporting a prisoner such as the same custody classification that Mr. Crouse is with handcuffs and belly chains and no leg irons that involved a foot race out of the Marion County Courthouse with a deputy firing shots at 11 a.m. on a weekday in downtown Salem and I'm not going to be a party to any - any possibility of reoccurrence of that type of incident.

DP: ^{for a} Once you get out of the car and you're walking in the field no one is going to be able to see this, I don't know where we're going, I don't know what - I don't know what this is like but I've been told it's a field and if you go in a field no one is going to see that, isn't that true?

SG: Well, how do you want to handle it.

JC: See when it - when it first started I said no leg irons, and no belly chains, I already said I wasn't going to run, all right, I'm under maximum security 'cause that's Moss wants.

DP: No you're under maximum security --

JC: No I'm under maximum security 'cause ^{that's what} Moss wants point blank.

DP: Well --

SG: Let me - let me cut through that part for a second, here's an individual that has done 8 years, he was out, he was violated for a, at the most, an Assault IV, for absconding

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 56

Statement Continuation Case #

Statement of Johnny Lee Crouse

which are very minor violations if they're violations at all so we're not talking about - I understand the policies and I understand all that kind of stuff but we're not talking about a person who actually has done all these terrible things without you might be considering in regard to the maximum security status he's under.

DP: Well what's his conviction crime for?

SG: Robbery and Robbery II --

DP: Okay.

SG: -- which he served 8 years for and he was paroled.

DP: Okay.

SG: So at least when he was paroled someone felt he was able to be out in the citizenry.

DP: Steve, parole doesn't mean that and you know that.

-SG: But, but again, he's not the kind - that's not the kind of - it's not like he had killed somebody and we're asking he's been in the pen for a week and we're asking him to get out, I mean let's talk about --

DP: Okay.

SG: -- I'm talking about the reality of that situation, the reality of that situation is that except for these policies, it's not as serious as you might lead it to believe.

RK: Ask that of the employee who just suffered a severe discipline yesterday for not following security policies in regarding to escorting an inmate outside the security perimeter.

TM: Why don't we do it this way, we'll go there, if there's people around, we'll back off, we'll wait a little bit, if need be we'll do it at a time when there wouldn't be people right around to make it as, uh --

SG: Unobtrusive.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 57

Statement Continuation Case #

Statement of Johnny Lee Crouse

TM: -- easy - unobtrusive, that's a good word, as possible. We can still go by the house - we - uh!

DP: Drive around. *can still*

SG: Again I'll leave it to Mr. Crouse, I interrupted you John, will you tell us what you want to do.

JC: Who would have to reduce the custody of these?

RK: I'll accept the decision no lower than Superintendent Moss.

SG: How about somebody over him?

RK: Superintendent Moss is the man in charge of the responsibility of his custody and care.

SG: You wouldn't take Mr. *Pierce's* authority?

DP: Well what about the idea that Detective Mason just talked about, I mean I guess your concern is you don't want people gawking at you and, and that's not problem we don't want that either, uh, we don't know where the place is so it's hard to judge exactly how this would work out but we'll make effort to make sure that people don't see you walking with - with anklets on and if that means we got to drive around for awhile, if we got to wait for awhile or whatever, that's what we'll do and then once you get out there and start walking around I don't think that's going to be noticeable, but I'll at least try that.

SG: Let us have a second okay.

DP: Okay.

TM: The tape's off, the time is 1451.

TM: The tape's on, the time is 1455.

JC: The reason I asked for the handcuffs and the shackles to be removed and other clothes, if this guy moves his clothes I have to go to his house and I don't want to go to nobody's door dressed in prison blues or handcuffs and shackles.

DP: If he moved the clothes?

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 58

Statement Continuation Case #

Statement of Johnny Lee Crouse

JC: Yeah.

DP: Okay. Well --

JC: Then I have to go to his house and when I go to his house it's all laid out in the open ^{then anyway} ~~there~~ so it's not going to make any difference, but I don't want to be in prison blues and only --

DP: Sure --

JC: Handcuffs and shackles. That was the reason that I ^{because} said my own clothes and without handcuffs and shackles and once I take you to the house you know who the person is point blank.

TM: But that's a different place than where the knife is ground, right?

JC: Huh? No.

TM: It's all the same place?

JC: Yeah.

DP: Okay. And what I've said is is that we aren't going to take any action about that house or that person until some later time and that we will make arrangements about your custody status before that happens and what we're trying to do today is go and see, get the clothes. We'd like you to drive us, let us know where this location is, who this person is. Tomorrow morning we'll work on talking to these two other guys you have, that you need to talk to and then we'll be at a position where we can evaluate and be able to ~~action or~~ ^{Taked} need more time or do whatever, but you still have the commitment we aren't doing anything with this other person or this other house, or this location, until your safety is set up and sure and through lawyers and you, understand me. So I - all we're talking about is let's go out and look at - look for them, if they aren't there and we'll - we'll make sure that people are gawking at you, they aren't standing around looking at you, that kind of stuff. If it isn't there then, you know, we'll still we want to do the drive-by there and know who this is. We won't take any action.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 59

Statement Continuation Case #

Statement of Johnny Lee Crouse

Tomorrow we'll pick you up again and we'll work on these other two guys and then we'll be in a better --

JC: Because, that - that was my only worry, you know, I don't want people -- my - my picture has been in the paper and --

DP: Sure --

JC: And all that, so --

DP: Sure --

JC: And you know I just - I want to try to change the atmosphere for my own self, not with the idea of people thinking, well this guy's looking at this and this is what he's done in his past and he ever runnin' my life.

DP: Sure.

JC: Uh, you know, I don't -- we can -- my attorneys told me to go ahead and go for it, if they ain't there, well we can just start over tomorrow, then - then --

TM: We won't have you go to any doors. We're not going to have you go to any doors today, just be a simple drive-by, if the clothes aren't there, we'll just drive by the other place and then as soon as we're done with that --

JC: I can't - I can't say guarantee that they're there. All I know is that they was there when we put 'em there and that's --

TM: You were present when they were actually placed in the location --

JC: Yes --

TM: That you --

JC: Yes --

TM: Taken? Okay.

JC: I can't guarantee -- like now I didn't promise you they'd be there. I could take you to the place where they was

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 60

Statement Continuation Case #

Statement of Johnny Lee Crouse

put at. The guy went back and got 'em, that - and that's another deal that we have to take another step towards it.

TM: What kind of clothes would they be?

JC: Huh?

TM: What kind of clothes are they?

JC: One's a tan waist - below-the-waist length jacket and dark pants.

TM: Jeans-like you mean or --

JC: Yeah.

TM: Slacks?

JC: Sort - jeans. It's just -- you know I'm trying to do all I can for you guys, and you know, I just kind --

TM: Okay.

SG: Well just maybe let's leave it this way. If you can agree you'll try and do it today under this condition we just --

JC: Yeah --

SG: Talked, but that tomorrow you'll request that at least when he's released that that criteria on the shackles --

JC: 'Cause see I think -- I think -- my own opinion I think he's --

SG: Removed --

TM: Come over here?

SG: Well if you're out looking for people!

JC: Yeah, 'cause I think - I think it's best if - if I -- and I have to go to a door and I have to knock and - and they see - they see that I have handcuffs and shackles on, that's it -- or handcuffs alone, that's it.

SG: Okay.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 61

Statement Continuation Case #

Statement of Johnny Lee Crouse

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JC: I can forget about anything.

TM: You see it seems -- it seems --

JC: All I'm tryin' to do is help you guys put - go to the man that did this --

DP: Okay --

JC: To take the heat off of my -- that's why I'm here today and that's the only reason I came here, no other reasons.

DP: Okay.

JC: I 'didn't come over here to play games and tell you a set of clothes is here, or this guy did it. These guys know who the guy is, they done told me who it was and my attorneys I trust.

DP: Okay. Well let's do this today and - and I'll work on this tomorrow and but like I said, we're not going to do anything until you're advised of it and your lawyers are advised of it and everyone is in agreement.

JC: Because all I'm askin' for is just a little trust, it's all I can -- it's all I can give you guys and that's all I ask in back. You know I'm not going to run if I have to sign papers or whatever.

DP: Okay. Let's go do this today and we'll make sure that people aren't gawking at you and work that out.

JC: Okay.

TM: The tape's off, 1501.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 62

TM: The time now is 1511 hours. We're in a police vehicle. Present are John Crouse, Security Manager Bob Kennicott and Tom Mason from Salem Police. The tape will remain on continuously. I think I'll stop here at this Plaid and take care - take care of the most important business at hand. I think I screwed that up too didn't I? Let's try this. Obviously not used to one on the floor. '100's Winston?'

JC: No, he said 'Marlboro's' didn't he?

RK: 'Marlboro's.'

TM: Oh yeah, the one with the tattoo?

JC: Yeah, cowboy.

TM: Do we know where there's an ashtray? Oh, he knows. Okay give me a hint where we need to be going?

JC: Think - uh - you need to go on the freeway till you get to you know where Highway Trailer Sales is on Portland Rd.?

TM: Yeah.

JC: You got to go out by that Circle K right there at the lights. You might just go down on 17th and go all the way -

TM: Yeah that's the quickest.

JC: Pull that ashtray out of there. My favorite spot to go at 1:30 in the morning.

TM: 'Winchell's?'

JC: Yeah.

TM: There's not a lot of them around - spots - at 1:30 in the morning. Usually many people in there?

JC: No, transients. I usually stop there before I went over - before me and Cindy went over to the coast.

TM: To the where?

JC: Coast.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Statement Continuation
Statement of Johnny Lee Crouse

TM: Oh.

JC: Went to the coast a lot.

TM: Whereabouts?

JC: The first time I went I left here at 3:30 in the morning and just went to Lincoln City, right there, then I went up to Newport, went down on the docks.

TM: That's neat, I like that town.

JC: I went to that little port there between Lincoln City and --

TM: Oh, Depoe Bay, or something like that?

JC: Yes, yes. Went down there, took a boat out for a while. That's when I fell overboard.

TM: You went overboard?

JC: Yeah.

TM: In the ocean? You were there with Cindy?

JC: Yes.

TM: How did you get overboard?

JC: Me and Cindy was goofin' off, she pushed me and I went over.

RK: Fun date.

JC: Huh?

RK: Fun date.

JC: God that water was cold.

RK: (Inaudible) with her.

TM: It was cold right with her.

JC: That water was cold, boy.

TM: Yeah they sometimes have a little trouble getting people back after they lose them out there. Have a jacket on or

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 64

Statement Continuation
Statement of Johnny Lee Crouse

something, life jacket?

JC: No, no it was just an instinct that soon as I went over I came up and started for the side, this side just reached my hand over and I was - I was cold all the way home. Then the 28th we went over and it was half decent day.

TM: The 28th of --

JC: March.

TM: March? Oh.

JC: We went all the way up to Newport then we brought the old highway back, stopped at all them little oasis.

TM: Up here in Corvallis, or the one that ends up in the ocean.

JC: No - he - this - you can go on the back - on the back highway to - from Lincoln City to Newport before they put that new highway in there?

TM: Oh yeah, yeah, okay.

JC: Where you go up to all them little resorts, those spots?

TM: Mmh - how long were you doing that, several days or --

JC: Just off and on when I wanted to get away from it all after eight years in the Joint I always heard about how the coast was so when I got out I decided to go and I decided to go was 3:30 in the morning.

TM: You hadn't been there --

JC: Ever.

TM: Oh is that right?

JC: I never been there.

TM: So you hadn't got there before you went to - went in to the Joint huh?

JC: Huh-uh.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 65

Statement Continuation
Statement of Johnny Lee Crouse

TM: Were you living mostly in Bend then --

JC: Uh-huh --

TM: Before you went in to --

JC: Yeah.

TM: Well that's probably a little more like Nebraska than other parts of the state, except the mountains, I guess there's no mountains in Nebraska.

JC: Yeah. That's where I checked my ex-wife out - out when I got out. Went back home to Mom and Dad.

TM: Okay. Whereabouts on -- you mean beyond the overpass out here?

JC: Yes.

TM: Past I-5 where the camper sales is there, or --

JC: You got to turn on this side of --

TM: Okay. I think it's Portland Rd. next here and --
I don't know if they're trying to talk to us or not.

JC: Right there.

TM: Huh?

JC: Rena Dale works that right there.

TM: Yeah that's right, Nancy's mom.

Nancy Smith
JC: I wonder if Nancy went to court yet. This gal was livin' with me for a while. Her mom does, she runs it, she's - she's one of the help over there.

TM: Rena Dale, do you know her Bob?

RK: Don't think so.

TM: She lives in a -- she had a release program that she was kind of helping out Community Corrections here in Marion County, probably five or six years ago, and it kind of went asunder and --

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 66

Statement Continuation
Statement of Johnny Lee Crouse

RK: I was in that place when it was called 'The Chateau' in '65 and Sankey got shot off the front porch.

TM: I remember Mr. Sankey. That happened before I came here but --

JC: He got it more or less, huh?

TM: Yeah, yeah, he did a bank robbery a few years later --

JC: Yeah --

TM: With a guy named Metz- -- Kenny Metzger.

TM: Yep. U.S. National down here.

TM: Who shot him off the porch?

RK: I think it was a guy, I don't remember who now.

TM: One of the old cons, or --

RK JC: Yeah - Sonny Hetland was out there that night.

TM: Oh yeah.

RK: Sonny was involved in it.

TM: Boy that's a name out of the past.

JC: I used to walk this road every morning going to work.

TM: Oh is that right? Where were you living then?

JC: At the Monterey.

TM: Oh and you'd just walk out here?

JC: Yes.

TM: Gee whiz. How did - how did this stuff get clear out this far?

JC: It's - I had a pickup at the time, I used a friend's pickup.

TM: Oh, okay.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 67

Statement Continuation
Statement of Johnny Lee Crouse

Q
A
Q
A
Q
A
Q
A

JC: Up here -- up here at the light you gotta' take a left.

TM: Take a left at the light?

JC: Yeah.

TM: All right. Which friend was that ^{that how} -- the pickup?

JC: A guy by the name of Ray. He was from California. He was only here for a short time.

TM: What - what - what kind of pickup?

JC: Chevy.

TM: Full size?

JC: Yes.

TM: What color?

JC: Blue

TM: Would it have been around out there on Center Street that night when all this was happening?

JC: No.

TM: Where he was staying at the time, the Monterey?

JC: No he was stayin' some friends of his.

TM: Okay now what?

JC: Straight on.

TM: Know Ray's last name? How old a guy was he?

JC: About 22. Okay you got to turn right here to the road right here.

TM: Right here?

JC: Yes. Okay, there's a driveway right here where you can turn in. There's a little road that goes up.

TM: Right here then?

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 68

Statement Continuation
Statement of Johnny Lee Crouse

33
74
14
11
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13
3

JC: Yes. Just turn right.

TM: Okay. Now which way are we going to be walking, that way over there? Okay. On the fence side or straight out under those trees?

JC: On this side of the fence.

TM: How far out?

JC: By - by them trees. See the thing is, so we came out here we came out here at night. I don't know if this property belongs to the guy that lives there or not, that's the thing.

TM: Okay. I don't ^{know} know if anybody lives there. Okay. Let ^{me} ^{let} them know what we're doing here and we'll - then we'll go for a stroll, clear over to the trees though you think, huh?

JC: Yes.

RK: Beyond that brush pile?

JC: Yeah.

RK: Man those containers look like that stuff that contains that radio-active stuff - they do.

JC: Yeah.

RK: The kind of containers for shipment. Don't know if the house is occupied the window's broke in front. th See I brought Glover out here one day and some guy came out of the house, that's the only reason I say so.

TM: Okay. Going to put that up that way and go ahead and get out here as soon as he turns. Do you want to slip that jacket we could do that I guess. Okay we're at Salem Industrial & Claxter Rd. We're on foot. Is it pretty much this way then? ^{was}

JC: Some of -- the grass used to be high.

TM: A little higher than it is now?

JC: Yes. They cleared a lot of stuff away from -- (inaudible)

Witnessed _____
Witnessed _____

Signed _____
Date _____

Statement Continuation
Statement of Johnny Lee Crouse

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TM: What did you say?

JC: Every time we came out I tore my legs up on this shit.

TM: Yeah.

(Dog barking)

TM: Was he here then? Was he here then?

JC: No. If he was he didn't bark.

TM: I think ~~he~~ probably liked you better than he does me.

JC: (inaudible due to dog barking) Everything we buried was right here.

TM: Where? You buried stuff --

JC: Right here, 'cause we got back here, right by here, this was it.

TM: In here?

JC: Before there - there was shrubs and stuff. This was here. That's why I say it's been changed. My stuff's been cut down back in here. There was one time you couldn't hardly see this fence, right in here.

TM: Okay.

RK: Do you use a shovel to --

JC: Yeah.

TM: You brought a shovel here? How many - how many people were there at this point?

JC: Just me and that person.

TM: Okay.

RK: Did you have a long-handled shovel or a short-handled shovel?

JC: It's just a short.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 70

Statement Continuation
Statement of Johnny Lee Crouse

10
21
31
41
51
61
71
81
91
01

RK: Square point blade or point?

JC: Short one - short-pointed blade.

TM: And was that that same night that all this happened?

JC: Yes.

RK: How deep did you have to dig?

JC: We didn't dig real deep, just a couple feet, or actually just covering it all up. We stomped on it.

TM: Why here?

JC: See because the place we just drove out here and you know, he said 'Let's do it here.'

TM: Okay --

JC: Time - at that time all that shrubbery just stuff right in there wasn't all piled up.

TM: Okay. You think it was any further back than this, or right here?

JC: Right here.

TM: Okay. And is just about where we're standing right this minute, or --

JC: Yeah --

TM: Was it somewhere else?

JC: Right in here.

TM: All right and just a little bit under the dirt, huh? Now what all would - would be buried here?

JC: A coat and a pair of pants.

TM: Okay. Anything else - a shirt - anything else?

JC: Just coat and pair of pants.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 71

Statement Continuation
Statement of Johnny Lee Crouse

TM: Okay. If we were to find those items, would there be any reason that - had you ever worn those?

JC: No.

TM: Okay. Would there be any reason that there would be any of your hair or anything else on them?

JC: No.

TM: So you've never been around and put them on at all - any time?

JC: No.

TM: Okay. All right and then you just kicked dirt on it and you stomped on it you say?

JC: Yes and that was it.

TM: Okay. All right, now let's -- you want to -- oh you're wrapped up there?

JC: You want to go --

TM: We want to go by the house where the knife was ground.

JC: Okay.

TM: We won't stop - won't even slow down. You want to kind of show that - we'll have one of -- Carl -- you show him and I'll start him walking back. We'll start walking back, but Bob can explain that spot there.

JC: These shackles tearing at my legs that's why I didn't want to wear them.

TM: I don't blame you for that, I'm sure they're not comfortable. Can I take the (inaudible/dog barking) or something.

JC: The person that the house we will go by?

TM: Uh-huh --

JC: Has already been considered in this (inaudible/dog barking). You just want somebody to pet you, you fucking hound. He's already been - been investigated once.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 72

Statement Continuation
Statement of Johnny Lee Crouse

TM: Huh.

JC: See why I didn't want these shackles?

TM: Yeah. I can - I can see it's bad enough out here even without them.

JC: Kennicott - he's got -- I wasn't tryin' to push the issue on Kennicott you know. He's got his orders too.

TM: Yeah.

JC: I just don't like walkin' out here, just --

TM: Yeah, well I know my department would balk, balk, balk, because it would be as much as publicity as you manage to accumulate it would be --

JC: I ain't got no reason to run. I've had that opportunity once.

TM: Well that's certainly true, you know. More than one I'm sure.

JC: Oh! God damn.

TM: Nobody's looking at us yet, they don't see us.

JC: See none of this stuff was in here neither.

TM: Those cat tracks?

JC: Yeah. See I asked for you specifically to be in on this interview, you did. One of the other people and I told - I told my attorney I said well I think I can trust Mason, I can trust him, even though all the other - other investigators are madder than a mother fucker.

TM: Well they are all tru- -- you can trust them all -- their's uh sometimes person --

JC: Here comes a --

TM: Oh we got one comin' from each direction, we're in big trouble here now. Hopefully they don't expect us to walk fast. They never paid any attention. They probably

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 73

Statement Conti ition
Statement of Johnny Lee Crouse

wouldn't even know if you were walking out of here without any clothes on. They would if I was, they'd all be blind.

JC: I knew that's the car that was following us.

TM: Oh, yeah, they weren't going to be unobvious about it. Poor lady can't figure out where she's at.

JC: I sure have met enough women in this town.

TM: Huh?

JC: I met a lot of women in this town.

TM: The tape is turned over, the time now is 1542 hours. So this place we're gonna drive by is somebody we've already talked to then?

JC: Yeah.

TM: Okay. Whereabouts am I going to need to go further north or here --

JC: You - you know where Buck Burgess lives?

TM: Buck Burgess?

JC: Yeah. -

TM: Okay.

JC: Over on - on Park Avenue.

TM: All right.

JC: I was surprised with the press knowin', press knowin' that we was going to meet today they wasn't standin' around waitin'.

TM: I wonder how they found out.

JC: It wasn't by me I didn't know until yesterday and I didn't tell nobody.

TM: They seem to have big ears sometimes. Hey Karl -- you want to stand by just a second here. I'll leave the tape recorder there.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 74

Statement Contir :ion
Statement of Johnny Lee Crouse

JC: This is your hunk of junk, huh?.

RM: That's not a bad little car.

JC: How come you got your squawk boxes on again?

RM: That's where they put it.

JC: I guess it ain't so obvious, huh? When they said for my mail to be read, how long was that for?

RM: I don't know. You can stop that any time you want to I guess.

JC: ^{No} Now I thought you and Pecyna came up and had me sign it, I didn't know how long it was for.

RM: I don't think - it was open-ended, I you know, until you revoked that permission I - I would presume that it's still standing, but that's up to you.

JC: My Mom goes in a couple weeks for heart operation.

RM: By-pass surgery?.

JC: I don't know, she just had three heart attacks.

RM: She mentioned that she had had some heart problems.

JC: My brother Richard moved to Oklahoma.

RM: Kind of leaves Larry in charge, huh?

JC: Larry's been stayin' home.

TM: Has he been out - you were out here once before with Glover?

JC: Yeah.

TM: Is that right? You didn't say that when I was in the car and Kennicott just told me. What was that one for?

JC: Huh?

TM: What was out here, or was it just this area?

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 75

Statement Continuation
Statement of Johnny Lee Crouse

JC: Just this area.

TM: Did you ever know anybody that lives here?

JC: Huh-uh.

TM: Do you know if Buck did?

JC: I don't know.

TM: Doesn't look like it's real occupied right now.
You don't have a phone do you - surprised you A.G.
guys don't have phones.

RM: There was --

~~RM: There was a proposal for cellular phones but they decided
not to do it.~~

TM: Yeah --

RM: There was a proposal for cellular phones but they decided
not to do it.

Inaudible

TM: Huh. Yeah I know the feeling.

Inaudible

TM: Yeah, I don't think -- we should have ripped off another
cigarette off of Kennicott when we had him, shouldn't we?
Course then Couple that I had get to was Kennicott says all you've done
is quit buying, you haven't quit smoking.

RM: Kennicott's no dummy.

JC: I smoked them last two 'Winston's
that Pecenia put in his drawer a month ago.

TM: I told you you could probably rub those together to get
them lit, it was true huh?

RM: Huh-uh, we like the cigarettes we got in those Vietnam's -
light the end of them your eyebrows would go, you know.

TM: Where - where did you park that night?

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 76

Statement Contin Lion
Statement of Johnny Lee Crouse

JC: Right here.

TM: Right here? And it was just the two of you you said?
Okay. Where - where did you meet up? Was it afterwards
that - that you met up or before?

JC: It was after.

TM: After? How late?

JC: About 3:30.

TM: A.M.? Down at the Monterey?

JC: Huh-uh, no, over by his place.

TM: Oh. But did you - did you know, before you met up, did you
know that something had already happened that night?

JC: Huh-uh, not at the time I didn't.

TM: Not until you saw him?

JC: Yeah.

TM: Where - whereabouts do you think you were when - when it
did happen?

JC: I was at ^{the} Monterey.

TM: At The Monterey?

JC: Well I was eith- -- two places. I was either, 'cause I
got paid the 16th and me and Cin- - Lucinda went to Safeway.
I - I was work the 17th, the night of the 17th at 7:00
o'clock. ^{at}

TM: You were at work?

JC: Yeah.

TM: Where you working at?

JC: The Monterey.

TM: Well what time do you think you went on to work, what time

Witnessed _____
Witnessed _____

Signed _____
Date _____

Statement Continuation
Statement of John Lee Crouse

were you on work?

JC: I was on work at five. They leave at five and I was on workin' at five.

TM: Okay. What did you do before you went to work?

JC: I was upstairs most of the day. Well see I stayed around there all da- -- most of during the day working there around the building.

TM: So - so you didn't have any contact with him that day?

JC: Huh-uh. I'm going to try not to get Pacenya and Glover involved today near the --

TM: Well -- just a second -- don't wander off.

JC: See I brought Glover and them out here twice.

TM: Pardon?

JC: I brought Glover - Glover and Pacenya out here twice, I think it was - once or twice. I ain't told them nothin', I didn't tell them about that spot right there.

RK: Tell them about looking for a --

JC: Knife --

RK: And a --

JC: Yeah -- huh?

RK: A wallet?

RK: Yeah, who was with you the night that you were looking for the wallet.

JC: Buck - Buck and Nancy Smith?

RK: Who was with you the night you were looking for the knife?

JC: Buck and Nancy.

RK: We were here two separate occasions with both --

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 78

Statement Continuation
Statement of John / Lee Crouse

JC: We - we was out here - that two separate occasion was both people and one occasion with Buck and that's the night we took that stuff back there.

RK: When you buried it, how was the clothing arranged in the hole?

JC: It was just put down in there. There's no special way.

RK: Which would have been on top?

JC: The coat would have been on top.

RK: Or rolled or folded?

JC: Just put in the bag, just - Ray put it and pushed down into the bag.

RK: How square or round was the hole? Huh?

JC: It wasn't real square.

RK: Round?

JC: Yeah.

RK: How much? I'm moving my hands.

JC: Not even quite that -- about like that.

RK: About eighteen inches, twenty-four inches.

JC: We was out --

RK: What kind of - we were talking of pant and coats. What kind of pants, what kind of coat.

JC: It was a brown coat that would probably come down to about here on somebody.

RK: Mid-thigh.

JC: Yeah.

RK: Light brown, dark brown?

JC: Just tannish color. About like --

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 79

Statement Continuation
Statement of Johnny Lee Crouse

RK: About like my trousers?
JC: A little darker than your trousers.
RK: So it would be a dark khaki color?
JC: Yeah.
RK: What about the trousers?
JC: They was blue, I think.
RK: Blue jeans?
JC: Yeah.
RK: Blue denim?
JC: Yes.
RK: Do you happen to the know the brand name - Levi, Wrangler?
JC: Uh - 501's.
RK: 501's. Were they acid wash or just plain 501's?
JC: Faded 501's.
RK: Those were the ones with the buttons in 'em?
JC: Yeah.
RK: Was there a belt with them?
JC: No.
RK: Would there have been anything in the pockets?
JC: Not that I know of, because see I didn't -- I didn't touch none of the clothes.
RK: Okay. Did you guys have flashlight that night?
JC: Huh?
RK: Did you have a flashlight that night?

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 80

Statement Contir tion
Statement of Johnny Lee Crouse

JC: Yeah.

RK: Was there anybody living in that white house that's
2085 address?

JC: I couldn't tell it that night there was nobody there.

RK: Okay. Any of the lights on or anything?

JC: No.

RK: There is a lot of brush piled up out here.

JC: A lot of that brush wasn't there when we came out here.

RK: Was it just bare dirt or just what - what kind of stuff
did you guys have to walk?

JC: We had to walk through higher grass and more weeds, more
than like thorn stuffs.

RK: From the road all the way back?

JC: Yeah. And there was more stuff on the fence, along the
fence line.

RK: Okay. Fence line was grewed up then?

JC: Yeah.

RK: And right now the stuff is just about --

JC: It's like somebody's came and cleared the land off.

RK: Okay but you can say that's about a little above your
ankles out there right now.

JC: Yeah. And it was almost above my knee area.

RK: It was above your knee?

JC: Yeah. Because at that night if any - if any cars came all
we had to do was just duck down, you couldn't see us.

RK: Okay. Now you're sure where we were standing there was just
about where you guys --

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 81

Statement Continues on
Statement of Johnny Lee Crouse

JC: Positive. --

RK: Positive. Could have been a little more back towards the fence or a little more this way, or --

JC: Give and take a little, not much. Not much at all.

RK: Why did you guys decide to dig there?

JC: See he just said 'Let's hurry up and get it done, all right?' and he put the bag down. He handled the bag the whole time. I didn't touch the bag.

RK: What kind of bag?

JC: Black garbage sack.

RK: Black garbage sack. Do you leave your clothes in a garbage sack?

JC: Yes.

RK: Was the top tied shut or twisted shut or tied --

JC: Tied shut.

RK: Pardon?

JC: Tied shut.

RK: By itself like you kind of pull the corners and tie them or would it have a string around it or what?

JC: Uh just - well you grab it by the corners and just tie it in a knot.

RK: Okay. Uh - whose shovel was it?

JC: His.

RK: His. What did they do with the shovel?

JC: Took it back with him.

RK: Okay. Where did they put it? Took it back.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 82

Statement Continued on
Statement of Johnny Lee Crouse

JC: Put it in his garage.

RK: In his garage?

JC: Yeah.

RK: Is there anything distinguishing about the shovel that you would be able to identify the shovel? What kind of shovel would I look for? Did it have red paint on the handle, orange paint on the handle?

JC: No it was just an old rusty ol' --

RK: Long-handled, short-handled?

JC: Short.

RK: Short-handled.

JC: And it had where you grip it at the top of the handle.

RK: Grip it at the top.

TM: Huh?

JC RK: I've got to let Kennicott in.

TM: Oh, maybe you can just lean toward me and get in.

JC: I can get in there, yeah.

TM: Oh he's not getting in yet.

JC: Now what?

TM: We're ready to go, I think. Like 'Bob's Burgers' okay?

JC: See I - the reason I didn't want these other guys in because I don't want 'em goin' over and bothering the person --

TM: Bothering what person?

JC: What?

TM: Well obviously he'll need to be talked to at some point in time, but not - they're not going to be talked to - nobody's going to be talked to until you're taken care of, just like

Witnessed _____
Witnessed _____

Signed _____
Date _____

Statement Contin ion
Statement of Johnny Lee Crouse

Mr. Penn said. Nodoby will be contacted or --

JC: See 'cause I gave run-around stories about this for a long time, fear for myself and finally when I came to agreement with myself and said I'll talk to Penn and see what I can get worked out, 'cause it involves just more than what we got - I got the superintendent I have to worry about, I have the security manager I have to worry about, you know.

TM: Security manager is Armiticus?

JC: Yeah. And those were the two that was about to lose their jobs before.

TM: Oh. So you know if Buck ever got any money? Well he - did he show you some money?

JC: Yeah.

TM: How much?

JC: He showed me quite a bit?

TM: You don't know how much though?

JC: No. Plus he's got two kids that live with him that do his burglaries and all that shit.

TM: Oh his --

JC: His wife - his girlfriend's son --

TM: Is that Alene or whatever her name is?

JC: I can never pronounce her name.

TM: So ah -- so did he tell you how much money that was?

JC: Just showed it to me, because he started using drugs at the time.

TM: What was he using?

JC: Heroin and crank.

TM: What - did he ever give you any money?

JC: No.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 84

Statement Contin ion
Statement of Johnny Lee Crouse

TM: Did he ever offer any?

JC: No, I never needed his money. I always have a little money of my own.

TM: That's going to be easier said than done isn't it?
Uh - now we'll get the seat belt on you too. You don't have much --

JC: You can take this coat off.

TM: Oh, okay.

RK: Gettin' a little warm probably huh.

JC: Well if I'd been smart I would - I would have just took this blue shirt off back at the station.

TM: When's the last time you heard from Buck?

JC: I seen Buck the end of March.

TM: What did he have to say?

JC: February or March he just asked me about a drum set that I told him about over at - over at Penny's. Asked me if I could talk to him about gettin' it. I told him I had to talk to her first, but I guess she got them ripped off.

TM: Oh, from his house or something?

JC: From her house.

TM: Oh.

JC: Gee whiz, a hell-of-a-walk clear down over that way, clear to the 'Monterey' day and night.

TM: What were you walking out this far for?

JC: To go to work.

TM: And where were you working at?

JC: 'Highway Trailer Sales.'

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 85

Statement Contir tion
Statement of Johnny Lee Crouse

TM: Oh, that's clear out there on just the other side of the
overpass there isn't it?

JC: Yeah.

RK: What's Buck's girlfriend's name?

JC: Alene - Alene or something like that.

RK: Still with him?

JC: I guess.

TM: How long have they been together?

JC: Quite a while. She had him sent back once to the joint.
He got out and they moved back in together again.

TM: Bob I've got a tape or two in the briefcase there if you
could - yeah - great, thank you.

Witnessed _____
Witnessed _____

Signed _____
Date _____

Page 86

Statement Contin' ion Case #

Statement of

TM: A new tape is placed in the tape recorder, the time now is 1613 hours, 06/15/89. We are still in the vehicle on Fairgrounds Road.

BK: Inaudible

TM: Oh, okay. Thanks.

JC: Take me 35 minutes to walk from the 'Monterey' clear out there.

TM: I can believe that. Probably some pretty crappy weather too, huh?

JC: Whew. Doesn't matter I'd get soaked to work anyway.

TM: What kind of stuff are you doing out there?

JC: I just washed a trailer.

TM: What sounds good here, uh, some kind of burger, shake and frie?

JC: Yeah. I sat at this place many ^{at} of night.

TM: Either here or Winchell's, huh?

JC: Well I come over here, me and Cindy would - to meet - meet a friend, one of her friends.

WAITRESS: I - Welcome to 'Bob's Drive Thru' - ^{May I take} ~~do you want to~~ place your order please?

TM: Uh, just a second, do you want a cheeseburger or regular --

WAITRESS: Holler when you're ready.

TM: -- burger or (inaudible)

JC: Just a cheeseburger.

TM: Okay, a cheeseburger, large frie and what kind of shake, chocolate, vanilla, strawberry, root beer?

WAITRESS: You have a cheeseburger and a large frie, was there something else with that?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 87

Statement Contin :ion Case #

Statement of

JC: Just, a, just get me a large coke.

TM: And a large coke.

WAITRESS: Large Pepsi okay?

TM: Sure. Do you want something Bob? No that'll be all.

WAITRESS: (inaudible) second window please.

TM: Okay, thanks.

JC: Cindy use to hate to go to some of these places with me 'cause I knew too many people.

TM: 'Cause you spent all day, time waiting here and stuff or people kept coming in.

JC: If she goes to a friend, if she goes over to a friend's house I know where she lives at, her old man didn't like - didn't - didn't care for me - didn't care for me going over there so I'd sit here down there by the phone booth, sit in there and talk to all the women.

TM: That's the part she didn't like.

WAITRESS: (waitress inaudible)

TM: Alright, got it, thank you.

WAITRESS: Have a nice day now.

TM: Thanks. Thank you. Okay, can you get that open or do you need any help?

JC: I can get it. These - the shackles feels like it's part of my body. I've even ~~trying~~ my tennis shoes with them on. Brandy lives right there. *Trying*

TM: Who?

JC: Brandy.

TM: Brandy?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 88

Statement Conti. .tion Case #

Statement of

JC: Yes.

TM: Which one, the white one?

JC: Yes.

TM: Who's Brandy?

JC: Another girl I was dating.

TM: Oh. What was her last name?

JC: Coy.

TM: Brandy Coy?

JC: I wasn't straight-laced enough for her.

TM: Oh. Too wild and wicked, huh?

JC: All I did was, the first month I was out, chase women.

TM: Well I guess I can understand that. Now I don't understand how, uh, you, uh, connected up with, uh, Buck that night?

JC: You see I was at the Monterey working, right?

TM: Uh-huh.

JC: The next thing I know and I had access to the office, I had keys to the office, the phone rings so I says yeah all right so I went and seen him --

TM: Where was that at?

JC: Over by his place. So he says I need to bury this stuff, I said for what, he said well I got paid to do Francke so I said all right, I said I don't want to know nothing about it and then right after we dumped all that stuff off he asked me if I knew where I could go get some drugs.

TM: But he showed you the money he got paid?

JC: Yeah.

TM: What was it in?

Witnessed _____

Witnessed _____

Signed _____

Date _____

Page 89

Statement Contir :ion Case #

Statement of

JC: Small bills.

TM: Okay was it in a brief case or a --

JC: He had a money bag, money bag.

TM: Like the regular cloth bank-type money bag? Did he tell you who paid him?

JC: An earlier discussion over at his place between him and I, we was setting over there drinking at his place and he told me that Armitkus and Moss talked to him.

TM: Okay, and that was before it happened. How much do you know, do you remember?

JC: He said enough - he said oh about ten thousand dollars I should be able to put a down payment on the truck.

TM: Now whereabouts did you meet him at?

JC: Where'd I meet --

TM: Yeah, that night.

JC: It was up by his place.

TM: Right --

JC: There's a four-corner stop right there.

TM: Yeah.

JC: And that's where I picked him up, the four-corner stop.

TM: And then you drove --

JC: Out there.

TM: Okay. Is this the street you're referring to as a four-corner stop.

JC: Yeah. He told me about the knife being stashed over here.

TM: What knife being stashed?

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 90

Statement Contin ion Case #

Statement of

JC: That there was a knife stashed over in this vicinity.

TM: Who stashed it there?

JC: He just said do you know if there was a knife stashed on this side of the hospital?

TM: Do you know if he still lives there?

JC: Yeah. He still lives there 'cause the van's there, the garage door is open right now.

TM: Is that where the grinder and stuff is?

JC: Yeah.

TM: In the garage?

JC: Yeah.

TM: Okay. Now we're got going to go there but-- do you have any idea where the knife was stashed over here?

JC: Huh-uh (indicated no).

TM: What was the purpose -- what was that knife?

JC: Just a knife he told me about, I don't know what the purpose was.

TM: Was that the knife used?

JC: No.

TM: How do you know the knife used was ground up?

JC: 'Cause he took me in the back when we went over to his place, he said 'I grinded the knife down, ^{said} there's no evidence left.' You see I thought to myself how come he don't burn the, burn the clothing, him and - the way it looked it was him and Alene's about ready to move. I didn't see the blue opal though.

TM: Blue Opal? *There*

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 91

Statement Continues on Case #

Statement of

JC: (Indicated yes).

TM: He owned a blue Opal at that time?

JC: Uh, his - Alene's son did.

TM: Oh. What did, uh, what did Buck tell you about what happened, how he did it or anything?

JC: He didn't really tell me no specifics of anything that, uh, he got his - they got their money's worth and that wasn't *wasn't* and other than that he just started doing the drugs and started drinking more and I didn't - I stopped going around there for awhile and I stopped over there occasionally just to say hi on my way over. I don't know if he told Mike anything or not.

TM: Mike, who's Mike?

JC: Mike Johnson.

TM: Who's Mike Johnson?

JC: He brought a knife into a Peycena and *them* then that he bought off of Cindy Lou.

TM: Is Mike Johnson a, a con, was he inside too?

JC: Yeah. He's a security guard, *no* know.

TM: Oh is that right?

JC: Yeah.

TM: For who?

JC: Trying to think of his name, some security *company - commercial company* (inaudible)

TM: Yeah, like Burns or somebody like that?

JC: I want to say something like a - there's a cartoon, there's a - some kind of a meal, it's got a funny name to it.

TM: Oh. Do (inaudible)

RK: Wakenhut.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 92

Statement Contir :ion Case #

Statement of

JC: No, uh, I would call it the chipmunk job that's what it sounded like to me everytime he said the name.

TM: Did Buck ever tell you where Armificus and, uh, - what's the other guy's name?

RK: Moss.

TM: Moss, uh, met him?

JC: Huh-uh.

TM: Where this first conversation took place? Do you have any idea how long before it happened that the first conversation took place?

JC: It wasn't, it wasn't all that long before everything happened 'cause I seen him after I got my first paycheck.

TM: Am I in the right place.

JC: Yeah.

TM: Straight up to the tower, huh Bob?

RK: Yeah.

TM: Okay.

RK: Stop identify yourselves to the tower then pull around to. just the other side of the stairs.

TM: Okay, all right. Uh, pop --

JC: Yeah.

TM: You done with it? Want to take one more? Maybe we'll just put it on the floor back here.

RK: I'll just dump it out ^{on the} carpet its Martineks car.

TM: Oh, yeah, right.

RK: I've been throwing all the other wrappers and stuff down there to.

Witnessed _____

Witnessed _____

Signed _____

Date _____

Page 93

Statement Continuation Case #

Statement of

Prison Tower: May I help you?

TM: Yeah, Tom Mason, Salem Police, uh, I have Mr. Kennicott with me.

Prison Tower: Okay if you have any weapons you need to store them in the box on the back side of the tower and come on in.

TM: Okay, thank you. Figure I'd get through quicker if I said your name Bob. Do I need to get out now or --

RK: No, in fact you can just wait here in the car Tom and I'll -

TM: Right here?

RK: Yep.

TM: Okay.

RK: Lean forward John.

JC: I'll see you again in the morning I guess.

TM: Yeah, yeah, see you.

JC: All right. Thanks Tom.

TM: Sure.

RK: Need about three minutes.

TM: That completes the transport, the time now is 1631.

Also present is Robert Kennicott, Internal Affairs Office, Department of Corrections.

Witnessed _____ Signed _____
Witnessed _____ Date _____

Page 94

CROUSE, J.
(Inmate on State Penitentiary)
Previously identified

The time is 3:28 p.m. on November 30, 1989, at the Oregon State Police Patrol office in Salem. Present in the polygraph interview room is myself, Detective William Pierce, Detective Mark Ranger, John Crouse and his counsel Steve Gorham. Does everyone here understand that this conversation is being tape recorded? John, do you understand that?

JC: Yes.

WP: Prior to the time that the tape was turned on, you had the opportunity to speak with you counsel and you also entered into, or had a letter of agreement from the DA's office. Do you understand that letter?

JC: Yes, I do.

WP: The purpose of it? Okay, normally, you understand, that in most instances in an interview we'd advise you of your Miranda rights. But in this particular case, because your counsel's present, we're going to forego that. I just want you to understand that you have your counsel here if you have any questions. That's what he's here for. Okay?

JC: Um-hum.

WP: What we'd like to do today is just maybe hammer out some things that have bothered us about your statements in the past and go over some items that questions have come up. Now, are you willing to do that? Are you willing to talk to us about some of those things?

JC: Yes.

WP: To give you a little bit of background on what's happened, is, we've never met before, but I've been on this case since it started clear back in January and when you would have occasions to make other statements and we would obtain information on that, I'm the guy that would go out and run around and follow up on those things. So I know a lot about the case, I've talked to a lot of people. I can't think of very many people that you've been involved with in Oregon relating to this case that I haven't talked to, to include people like, you know, Joyce Anderson, you know the guitar business, all those sorts of things that I've been involved in. So, I know a lot about the people that you've been involved with, you know, from the Cindy Hathaway's, and the Nancy Smith's, and Lucinda Cooley's, you know, right down the line. So, you know, a lot of those questions are some of the things that you're going to tell me, I'm probably already going to know about.

MR: In my opinion, I think Bill is probably the most knowledgeable of all the investigators on this case and he's got an excellent memory so he knows what he's talking about when he's talking to you.

WP: What I'd like to do is, if we could, just focus on where you were at when and if there's anything there that we have missed that we could go back on and confirm where you were at at a certain time. So I want you to think back in January. You've gone over it a number of times before, I know, okay? But what I want to do is think back in

0001153

jar y and I want you to focus in on two things that occurred to you. I want to talk about what happen between the two things. Two things I know about. I'd like, if you would, to fill in the blanks between. The first thing is that we know that you walked out of Stan Groom's office on the night of January 17th at about 5:45 p.m., that you'd gone there on the normal visitation. Am I correct?

JC: Um-hum.

WP: And then we know that after that you had occasion to go down and see Dr. Lewis at the Salem Hospital for some stomach problems. And that occurred about noon on the 19th. Remember that?

JC: Yeah.

WP: Can you give us an account of what you did between those two dates, the 17th and 19th?

JC: The 19th, after I was....on the 18th. I'll go from the 18th. On the 18th, all night I worked at the Monterey. Got a job as night manager at the time. So I got off early that day and I went up to my apartment. I was living in Apartment 203 at the time. I was living with Lucinda Cooley and she fixed something to eat that night and then I woke up the next morning and I wasn't feeling too good. It was that night I was starting to have stomach cramps, so I went down to work and my boss told me just to take the day off. So about noon I went over to the, Lucinda had went someplace, down to the P.O.'s office downtown because she had some community service time to do, and I went over to the hospital. I was at the hospital approximately 2 to 3 hours, somewhere about right in there. And I went back to my apartment, that's where I stayed at that day. Matter of fact, I was in bed all day, the 19th.

WP: After you went to the doctor?

JC: Yeah, after I went back to the doctor.

WP: So, Lucinda fixed you something to eat on the night of the 18th that made you sick. Is that what you're saying?

JC: Yeah.

WP: The day before you went to the doctor?

JC: Yeah. 'Cause I just,, during that afternoon I starting having real bad stomach cramps and I was out 'til the next day 'cause I didn't want to go to the doctor. I quit my job at the Highway Trailer Sales on the 17th and they kept calling me, asking me to go to work and I wouldn't go to work. Then on the 17th, I got off of work about 10:00 o'clock and I went upstairs. I think I just laid down and went to sleep, or goofed off probably. The thing that I'm not sure of is that the time that I went out to see Stan Groom, alright? You tell me about 5:45 I left his office.

WP: Do you remember going out to see Stan Groom that night?

JC: When I remember is, I know that I went to see Stan Groom that day, but I know right around that time of month, I was getting a subsidy check. I checked with the downtown office and they said, "No, Stan Groom would be there. Alright? I can't remember if it was that Tuesday or the Tuesday after that. Then I went out early 'cause I had somebody takin' me out to get me the check. Maybe Hollow Peter was the one took me out to get the check. If I seen Stan at 5:45 that night, see, then when I left Stan Groom's I usually walk back to the Monterey. It's only like a 20 minute walk.

WP: How would you walk back?

JC: Like around down Center Street and down through Safeway's down there and then I just cut across. I usually turn right about McDonald's and turn and go down the road. That's usually how I went down. That's the night () seen the way I went.

WP: Do you remember going to Stan Groom's office that day, though?

JC: I usually went every day that I was supposed to go.

WP: How often did you go?

JC: Twice a week; Tuesdays and Thursdays. And it's usually in the evening that I went to see Stan; wasn't usually during the day; usually in the evenings that I went to see him; right around the 5:00 o'clock area. () anytime I went out. Stan asked me about my job. I told him I was thinking about quitting my job and there wasn't really nothin' said after that.

WP: Okay.

MR: I think you're going to have to speak up a little bit. Your voice is tailing off a little bit.

JC: But, uh, if I remember, there's a night, () one night. I don't know if it was that night that I caught a glimpse outside. 'Cause there was a whole bunch of guys standing right there, but if I walked to 'em, 'cause there wasn't always,, I never,, once in a while I did take the bus back and they were always walkin'. If I was to go out to see my friends out in south Salem () people you talked to, I'd catch a bus. But I believe I walked home that night. I can't say for sure if I did or not. I can't be precise on this. We're talking almost a year ago.

WP: So you walked home from Stan Groom's office back to the Monterey?

JC: Yeah, 'cause I was working that night. I was working at the Monterey that night. I know that for a fact. 'Cause I was sitting right in the office when Debbie Hall, Peter and Julie Bunn come to work the next morning. Then, Debbie has a radio sitting right there and that's when I heard about the incident with Michael Francke.

WP: Is that the first time you heard about the Francke murder?

JC: Ye- that's the first time I heard about it..

WP: You're sitting in Debbie's office; the one downstairs.

JC: Yeah.

WP: Is that what you do for them? You sit in that office all night? I've been down there a bunch of times....

JC: No.

WP: Did you get out and wander around?

JC: Yeah, I had to walk around the building and at the time since I wasn't living on the 3rd floor, I had to walk up to 3rd floor and any stragglers I had to chase out at night. See, and there was a time right in that area that I had to chase a drunk out and him and I almost got in a fight. And matter of fact, a lady by the name of Vicky at the Salem Police Department, I called her a couple of times. I can't tell you the dates I called her, the evenings I called her, but I remember the other night, I was working at the,,,I was up all night at the Monterey. Then we sat in the office and when that came on the news, there was nothin' really said about it at the time and I just went up and went to bed until,,,I always slept 'til usually noon. But Stan Groom came to the house and I can't, came to my apartment, I can't remember when it was but it was right around that area of time. Him and Gary Wait came to my apartment and I had two people (). Lucinda was there and another guy was staying there.

WP: We know who that other guy is.

JC: Yeah, Witt.

WP: What time was it? That would have been the morning of the 18th, right? We're still talking about if you went to Groom's office on the 17th and you worked at night, then we're talking about....

JC: I remember goin' seeing Stan, 'cause I'd been good, going out every chance I got. Once in a while, if I wasn't feeling good, I'd call him and tell him that I wasn't feeling up to it. I believe it was on a Thursday that Floyd Burin tried to get ahold of him, 'cause that's when I went to the hospital; I was sick and I didn't want to go out and see Stan. That's when I can't go out there. That's the thing that's botherin' me now, 'cause I'm trying to figure if it was on the 17th that I had him call Stan that I wasn't going to be in that day or if it was the following Tuesday. I know it was right around that area....Floyd kept trying to call and Stan wasn't in all the time.

WP: What time was it on the morning of the 18th when Debbie came in? Was Debbie there when you heard this on the radio?l

JC: Yeah.

0001156

WP: What time of the morning was that? Do you have any ?

JC: That was approximately about 8:00 o'clock, 'cause Debbie, her time starts from 8:00. She's usually there about 8:00.

WP: So she generally shows up around 8:00 o'clock?

JC: Yeah. And I'm usually right there at the office when they come in because, like I go to work when they'd leave. I start my job at 5:00 o'clock; that's when I took over. Then most of the times I'd be up when they came in, which I didn't have to stay up all night but usually I did but then when Debbie come in, I gave a report of what happened that night. Then if there was stuff I wasn't sure about, I called Debbie at home and talked to her about it on the phone.

WP: Yeah, she kind of rules the roost down there, doesn't she?

JC: Yeah.

WP: Did you talk to Debbie about it, when you heard it over the radio about the murder of Michael Francke?

JC: Not then.

WP: Did you talk to anybody else after that, that day, about the murder?

JC: Not that I can recall, that day. Not that I can recall. If I did say anything, I said, "Well, I don't know why they killed that guy." That'd be the statement that I made. I know that I made that to somebody around there. There was many a time, by people that you, that you talked to yourself, asked me, "John, did you kill that man?" and I'd tell them, "No."

WP: Was Whitney Fish living with you then? Was he living in the same room with you and Lucinda at the time?

JC: Off and on, he was staying there. He was staying between my place and the other guy's place.

WP: Do you remember if you talked to Whitney or Lucinda either one about the murder?

JC: Nope.

WP: No, you don't remember, or no, you didn't.

JC: I didn't talk to them.

WP: Have you ever talked to anybody after that about it?

JC: There was a discussion in the office a lot about, about the murder, and if somethin' don't interest me, I ain't

E. R.-1188

go... to stick around and listen to it. I was asked I knew the guy and I said, "No, I really don't know
th...". And then in one discussion, I don't know... was right at that time, one discussion that c... p, I
even said, "How could somebody get away with doing murder in the area that it was supposed to happen at? I
walked around that place zillions of times; security walks every hour over there at the State Hospital.

WP: Okay, when you say you walk by zillions of times, did you walk by after you got out of Stan Groom's office?

JC: I walk by it when I was either going to Stan Groom's or leaving going over to see Buck Burgess or going over to
the Village Inn Pancake House over on Market Street. There's guys that I associate with that you guys don't even
know about.

WP: After you got out of Stan Groom's office that night, do you remember which way you walked?

JC: I think I left there, one of the times I even stopped to see, it's in the month of January that I stopped at
Alcoholic Anonymous place right over by there and I met a gal and we had coffee and then we had to another A.A.
meeting and she took me home.

WP: Do you know who she is?

JC: Yeah, I know who she is.

WP: Will you tell us who she is?
Was it the same night? or do you know?

JC: It was right around that time that I met her, you know, 'cause I told her I just got out of the Pen and now I was
trying to straighten my life out and then I told her that I had problems with alcohol and that I had a little
problem with drugs. So, I met a few of her friends and from time to time I called her out at her place in
Aumsville where she was living with her Mom. She works at a Pizza place down there behind Sears. Can't think of
the name of it; it's right behind Sears.

WP: The one there on the creek?

JC: Yeah.

WP: She still work there?

JC: I don't know. Then once in a while I'd go over and talk to Robin at the Village Inn Pancake House.

WP: Let's go back to the gal that was at the A.A. meeting. What's her name?

JC: Laurie.

WP: Do you know what her last name is?

JC: No.

WP: What does she look like?

JC: She's about 21; about 5'6", sort of heavy-set gal, not real heavy, but just heavy-set gal. She's got a lot of energy.

WP: Was that the only time that you've ever stopped? You talking about the same place on Center, the DSOS? Is that the only time that you've ever stopped there?

JC: I stopped there one night after I got done seeing Stan Groom to pick up Lucinda from there. 'Cause that's where she waited for me when I went up to Stan Groom's. Then there's the day that she had to go out and see Parker out there and I went out earlier that day and seen Stan. 'Cause it wasn't very often that I went out and seen Stan.

WP: Let me ask you this. Maybe it'll help you out a little bit. When you went from Stan Groom's office to the SOS and met Laurie?

JC: That was that night. That was the one night I went there.

WP: Okay. We don't know that that's the same night though, do we? Was that night before or after you had to go to the hospital?

JC: That was after I went to the hospital.

WP: That was after you went to the hospital.

JC: So, then I run around with Buck Burgess and Mike Johnson, which you already talked to. I know you talked to Mike 'cause he gave you the knife that he bought off of Lucinda.

WP: We know about that. Let's go back then, when you walked down to the SOS, that was after the time you went to the hospital. Then we're not talking about the night of the 17th? Do you remember?

JC: The day of the 17th, as best as I can knowledge back to, is that I worked the night of the 16th, I slept, I did a lot of goofing around. I can't tell you what part of town I was in at any time of the given day. I went down, I spent time down in downtown. I goofed around downtown. The night of the 17th, approximately at 6:30, I called Ed and Barbara on the phone 'cause I asked them if they received a box that my Mom had sent and they said they haven't yet, got nothin' yet.

WP: Where did you call them from, do you remember?

JC: From the pay phone down at the Monterey.

E. R.-1190

WP: The Monterey. So, you paid for that yourself or did they?

JC: Yeah. I paid for that myself.

WP: What day was that on?

JC: That was on the 17th.

WP: So you were already back in the apartments by 6:30, is that what you're saying?

JC: Yeah. By 6:30 I was back in the Monterey, on the 17th.

WP: How long does it usually take you to walk back? You know, you're not wearing a watch now. Did you wear a watch then?

JC: Yeah.

WP: Did you? How long did it usually take you to walk back?

JC: It took me to walk from Stan Groom's to the Monterey exactly 15 minutes. That's about average.

WP: So what did Ed and Barb tell you about the box?

JC: They said they ain't got nothin' yet. That was it. I called Ed and Barb just about every day and I was out. Because I talked to Barb just a couple of days ago 'cause I been running through this whole thing, the 17th, through my mind, 'cause I asked her if she remembered me calling her 'cause I talked to Ed that night and Barb said, "You called here so much I can't really say." But I know I called her that night, the night of the 17th, right up front.

WP: Why does the 17th stick in your mind? Why would you have called? I mean, how do you know that?

JC: My mother called her the 17th. That's what I was told. They talked to my mother. See, I was thinking that I called my mother and then my mother called them and I talked to her.

WP: And that was just a short phone call?

JC: Yeah, just a brief phone call. But you gotta' take it, there's a period of my life right in there that I was shooting drugs, I was drinking, I was gettin' drunk at the Monterey a lot, doing a little drug shootin' there. I got paid \$50/\$48 the 16th from the Highway Trailer Sales and if I'm correct, one night I was to work and me and Lucinda went over to a friend's house, Dave and his girlfriend's, and I went down and bought a case of beer and ordered a pizza, Dominoes Pizza.

WP: That's not around the 17th?

E. R.-1191

JC: Ye .hat's right around the 17th. 'Cause my first heck I know where I was at.

WP: Okay. You're going to have to back up here. You lost me here. You got paid on the 16th.

JC: Yeah.

WP: How much money?

JC: \$48 and some cents.

WP: Okay. And that's from Highway Trailer Sales.

JC: The reason I know that so well is 'cause I got the check stub in my house.

WP: Where did you cash your check at, do you remember?

JC: I cashed it right out there.

WP: They cashed it for you?

JC: Yeah. And that was on the 16th.

WP: The 16th. Now, where did you go out and have pizza? Is that the 16th or?

JC: When I went out to see Stan, I had money in my pocket. Alright? I went back, when I got done seeing Stan,,, see, that's what bothered me.

WP: Listen, I want you to understand something. Okay? I mean, that was a long time ago and it's okay if you don't remember. You know. We would rather that you not remember and you told us, "Hey, I don't remember," than, you know, put something together that was going to haunt both of us. Okay? So, if you remember, fine. If you don't remember, you know, say so. That's okay, too. Okay? You had money in your pocket when you went to Stan's.

JC: When I went to see Stan.

WP: How much money did you have in your pocket, do you know?

JC: Just what I got paid. 'Cause I didn't spend none. I stopped and got a couple of packs of cigarettes so I had about \$40.00.

WP: Did you do that on the way out to see Stan? on the way back?

JC: Yeah. I did it on my way out to see Stan, 'cause I got up that morning, the 17th, and I went down to the office;

E. R.-1192

I * ed to Debbie. The thing come on the news. () went up and went to bed; gr 3. I
di e shit around there; goofed around downtown a le bit. Even going out to see Stan that day i ethin'
I I I did but I just, how do you go back a year ago and say, "Yeah, you did this"?

WP: You don't remember which way,

JC: Seeing Stan.

WP: Okay. That's fine. I'd rather have that, than have you, you know, come up with somethin' about how you got there. Okay?

JC: 'Cause that was right in the period of time when I had Floyd Bunn trying to get ahold of him 'cause I wasn't feelin' good. And Floyd Bunn told me one morning when he came in, he said, "You look like shit. Why don't you go to bed." I said, "I have to go see my P.O. Will you call my P.O.?" So Stan tried to get ahold of my P.O. right in between that time. I got off of work the 16th, I got my check early 'cause I was going out to see Bridgeway 'cause Stan says I have to go through all that shit. Well, me and my boss had got in a little conflict that day. He said, "Well, I can't have you working here if you have to do all this running." I said, "Well, talk to my P.O. about it." So I quit that day. And the next day. See, that's the only problem with the 17th; I know partly what I did, but I can't say everything that I did. Like, I can't remember when I seen Stan Groom that night. Look, I've just got, I'll just, I'll print it, man; I was all over this town. I was from one end to the other.

WP: Well, let's go back over again what you do remember for the 17th. Okay? You don't remember going to Stan Groom's?

JC: No.

WP: What else do you remember?

JC: I remember that morning that the conversation, 'cause when we heard on the radio no conversation come up about it, Michael Francke murder.

WP: Okay, now let's; don't confuse yourself and us, too, here. Okay? Michael Francke was murdered on the evening of the 17th, which was Tuesday.

JC: Right.

WP: Okay, in the evening.

JC: So, we heard it in the evening. I made that ().

WP: Okay.

JC: But on the 17th, I don't remember when I seen Stan.

E. R.-1193

WP: Th fine. We can understand that. What else do remember doing on the 17th?

JC: I called in Barb about 6:30.

WP: Why does that stick in your mind?

JC: Just stuck. That stuck with me since

WP: talking with your comb. Ed?

JC: Yeah.

WP: Who told you about your Mom?

JC: I can't remember which one, 'cause I talked to 'em both for a few minutes.

WP: And when did they say your Mom had called?

JC: Earlier that day. 'Cause I had to call them and I had to ask 'em behind ya; that's () remember what happened, what I was doing that day. I got to try to recollect what I was doing. I asked Barbara, I said, "Do you remember me calling on the day of the 17th?" And she said, "I know (tape ended on one side)

SG: 'Cause I think I understand what he's saying, but I'm not sure we're all clear on it. The real question in calling Ed and Barbara, you think you called around 6:30 sometime, you think it's the 17th because you called them and they told you it was probably around the 17th, or do you remember it was the 17th?

JC: For some reason, it sticks in my mind that I called them on the 17th.

WP: But they didn't tell you it was the 17th?

JC: No. They didn't tell me it was on the 17th.

WP: And when you called them; you've talked to them recently?

JC: Yeah.

WP: And you asked them....

JC: I asked Barb.

WP: If she remembered?

E. R.-1194

JC: The night. She says I can't remember. She says, "I know as you came here a lot. And you, the, fi- started interviewing me, it stuck in my mind t' know that I called Ed and Barbara on the 17th"

WP: So you remember that on the 17th?

JC: Um-hum. And that was right about 6:30, 'cause...

WP: And what time do you go to work now?

JC: At 5:00.

WP: So you were working when you made the call?

JC: Yeah.

WP: And then you worked all night?

JC: Yeah. Once in a while I'll slip away for a few hours and go see somebody and then come back. I'd ask somebody else, if somethin' happens, let me know. And that was Kenny, you know, he works here, too; well, he did work here. I don't know if he still does now. He did. 'Cause sometimes I'd go down and I'd tell Kenny, "Kenny, I'm leavin' for a while. You can look out for things." And he did.

WP: And then the morning of the 18th, you were there when Debbie (last name?) came to the desk? Let me ask you again, so we get this straight. When was the first time you heard about the murder of Michael Francke?

JC: About 8:00 o'clock.

WP: On?

JC: The 18th.

WP: And how did you hear about it?

JC: On the radio.

WP: Is there a T.V. down there, too? Or is that a T.V. monitor that's up on the wall there across from the desk?

JC: A jailhouse T.V.

WP: Oh, a jailhouse T.V. Okay. But you heard it on the radio?

JC: Yep. 'Cause that's one of the first things Debbie always did, was turn on her radio when she came in to work.

E. R.-1195

WP: I can't listen to it or you didn't have it on?

JC: No.

WP: How long had you been in the office down there when Debbie came in? Do you remember?

JC: I think I was in there probably all the time she was ()

WP: No, no. I mean before Debbie showed up?

JC: I was probably in the office just a short time. I was up in my apartment the rest of the time. What I'm trying to remember back now is when they did the drug raid over there. See they had a drug raid right around in that time.

WP: Okay, so now we're at the morning of the 18th and you hear this murder on the radio. Now, you didn't talk to anybody else about it that day?

JC: I didn't say nothin'.

WP: And am I correct, what you told us before is that night Lucinda fixed the dinner that made you sick?

JC: (Laughing) Yeah. Boy, that woman couldn't cook.

WP: What did she fix for dinner? Do you remember that?

JC: Somethin' that we got down at the store, I think, and I can't remember exactly what it was. Woman couldn't cook.

WP: And Whitney Fish was....

JC: Somewhere, somewhere. He was a fly-by-night guy that I met at that time. But him and I was having a lot of conflicts between one another because I told him, I said, "Look, you gotta' keep them fuckin' syringes out of my house or you have to go." I can't remember if it was before the 17th or after the 17th I told him that, 'cause he ended up leaving or moving in with this Indian guy and all his stuff was still there 'cause I moved upstairs. I left the Monterey on the 31st or the 30th, I think it was, so,,, and I was only living upstairs a couple of weeks, Apartment 301, and I managed the apartments, but after I heard that on the radio on the 18th, I know I didn't talk to nobody about it. I can much less,,, at that time I was hearing () got killed in this town. All I told myself, I knew it wasn't me 'cause I was here. And I think if I remember right, that was one statement that I made to Debbie. I said, "I don't care, I was here." There's one person you talked to that I don't even know, supposed to ask me the question, did I kill Michael Francke? and the name has not rung a bell in my mind since I read it in the papers a zillion times. A psychologist or somebody was supposed to have questioned. I don't remember being in no car with no psychologist taking me anywhere.

WP: Well, you lost me there, 'cause I'm not sure what you're talking about.

JC: We the thing is, the thing is, I have to try to remember everything I do. I'm trying to put myself the day that I walked out of that Penitentiary December 4th until I was arrested on April 1st.

WP: You understand that what we want to do is just figure out where John Crouse was at between the time he walked out of Stan Groom's office and when Dr. Lewis saw him at the hospital.

JC: I know I was at the Monterey a lot before I went to the hospital. Alright? Prior to that, I was doing a lot of work at the Monterey. A lot of remodeling.

WP: So you don't remember going to Stan Groom's office?

JC: No.

WP: And you don't remember...

JC: You can tell me that I went to see Stan Groom. I would have no other recollection but to believe you but you see it on paper.

WP: That's fine. We prefer that than having you tell us something that...

JC: 'Cause anytime I left Stan Groom's office, I was right back down in my job. I mean, Stan Groom told me, he said, "You have to move from the Monterey."

WP: Bad place.

JC: Right. I told Stan Groom, I said, "Look, I don't have to pay rent." I said, "It's a roof over my head." And I said, "I get paid at the end of the week." And I told Stan Groom, "If I move, I'm going to lose my job."

WP: Okay, let's go back to what we were talking about. 'Cause then you see dates. Okay? After you made the phone call to Ed and Barb, did you talk to anybody else at the Monterey?

JC: No, I went upstairs to my apartment.

WP: Was anybody in your apartment?

JC: Yeah, Lucinda was there. These people across the hallway had been, I can't think of their names, in the apartment across from me, happened to stop and asked me how I was doing when they came in that night. () I don't know if she talked to them, but.....

WP: Okay. So you don't remember what happened on the 17th?

JC: I just recollected about what I did.

WP: Ar member the radio; hearing about the murder. F ou had the lousy dinner on the night of the 18' i you
we sick on the 19th.

JC: I went to the hospital.

WP: You went to the hospital. Okay. Right there, now, let's jump back a little bit. In February, you went in and
saw Stan Groom again and you told him a story. Why?

JC: I walked by that place one night and I seen a fight and I wasn't sure in my mind if it was the 17th or the Friday
night and Stan said, "What would you thought?" and I just talked to Stan. Stan called this guy, Mason, brought
me down here and talked to me and when I was getting ready to leave, Pecyna and this other guy said, "You're a
fuckin' liar." I said, "Fuck." That exactly what I told them. I know what I told them.

WP: Let's go back here....

JC: I went back in my mind.

WP: I know, I know what you did in your mind. But let's go back here a minute. You said that you walked by there one
night and you saw a fight.

JC: Yeah.

WP: Okay. Let's go back to the business when you went to the hospital. Was that before or after the hospital?

JC: That was before.

WP: Why did you tell Stan that it was the night of the 17th? Or did Stan? How did that happen? Did you tell Stan it
was the night of the 17th?

JC: No, I didn't tell Stan it was the night of the 17th. I just told Stan that I might know somethin' that might be
helpful in the Francke case. I didn't tell Stan it was the night of the 17th. ()

WP: So that didn't have anything to do with this case?

JC: All I told him is I was walkin' by there and I said I seen a fight in the parking lot right there. 'Cause once
in a while I've cut through the hospital there to go to Buck Burgess' or someplace else, that I cut across and
prior to that, when I was over at the MAC program, social skills program, then you look right, I know the whole
area. You look out the window, you see over there, so I know the parking lots and all that. Fact is, in the
parking lot here I seen the fight, and I seen the fight and Stan said, "You remember what night?" And I said,
"No, I don't; actually it might be somethin' into this." I didn't tell him it was the night of the 17th, night of
the 18th, night of the 19th or night of the 20th. I told Stan, "I can't really remember what night it was."

E. R.-1198

WP: Ok let's go back here a second. When you saw this guy, do you remember where you were going at the time?

JC: I was coming from somewhere.

WP: Okay. That's fine. Then where was the fight at again?

JC: Right in the parking lot area. Right in front of the capitol, I mean, the Dome Building.

WP: What did you see exactly?

JC: I seen, there was fight going on, and there was a couple of people involved, and one guy took off running around to the area there and a couple of other guys went down and jumped in a car and took off. Right? I just went on about my own way. Then I went back to the Monterey. I didn't think nothing about nothin'. In fact, I think that's the night I went and bought myself some crank and went on about my little job.

WP: So, let me make sure I got it clear. This fight that you saw, that you told Stan Groom about, was before you had to go to the hospital.

JC: Yeah.

WP: Do you remember how much before?

JC: Just a few days. Just a few days. See that's the problem is that I can't tell you. I walk that area pretty close to every day, 'cause there for a while I was going over to see Buck.

WP: How did you go to see Buck?

JC: Same way I walked out to see Stan. I just take a turn at the gas station and walk right down.

WP: Where were you at when you saw the fight?

JC: I was just right there on Center Street walking past the deal. I was probably out clearing my eyes. It was about 7:00-7:30, between 6:30 or 7:00, 'cause it wasn't all that light outside. I just went on about my little ol' way. Just got out clearing my eyes, glanced over and you know, as I was walking down, I seen 'em split up and I just went on my way. That's when I told myself, I don't want no party to no bullshit. Then when I get back to the Monterey, I go right in the office to see if there's any notes. Every night after I went out to see Stan. See, I can say, I'm pretty sure that I went to see Stan that day 'cause that's right at the point where I was going out to see Stan all the time. I quit seeing Stan on February 17th, February 18th I stopped seeing Stan. I got out of my interview here; Stan Groom had a shitty attitude towards me. I just said, "Fuck you," and I walked out of the office and I says, "No more." And that's what I meant. 'Cause I was living out at Penny's house.

WP: We know about Penny, when you were living out there with Nancy or something. Let's go back to this fight business. Were you going out Center Street or coming back towards the Monterey?

E. R.-1199

JC: Co back towards the Monterey.

WP: Which side of Center were you on?

JC: The side of the sidewalk.

WP: Okay. You were at the sidewalk there 'cause on the other side, there's no sidewalk. So you're on the sidewalk and you're walking towards the Monterey and is it dark?

JC: Not real. I can't say it was real dark but it wasn't real light. I can't tell you the exact time.

WP: That's fine. And, so you're minding your own business and...

JC: I just catch somethin' out of the corner of my eye. See a little scuffle going on for a few minutes. I see these guys all split. I just went on about my way.

WP: Have you ever seen any of these guys before?

JC: Not that I recollect.

WP: Did you stop walking when you saw this?

JC: No. I ain't going to just stop and stare at something. I have a complex when I walk by that MED, Social Skills and all that. I have a real complex walking by that. Besides, the guys might know who I am and try to involve me in something. I slowed down my pace and that was about it.

WP: Did you hear anything?

JC: I just heard somebody say, "Git." And that was about it. It was said in a Spanish words.

WP: Do you speak Spanish?

JC: No, but I understand it. I speak Italian.

WP: Is that close. I don't know.

JC: It's not much.

WP: You don't speak Spanish?

JC: I speak some of it but not fluently.

E. R.-1200

WP: Do understand a little bit?

JC: Yea.

WP: How much do you understand?

JC: Well, when I was talking to () I can understand just about half of it.

WP: Where did you pick that up?

JC: Been enough Penitentiary to know. So, actually on the 17th, I can't tell you what I was doing. All I know is I was at the Monterey that morning. I got off work the 16th. To me, on that day of the 17th, I wouldn't know if it was a Friday.

WP: Okay, well, let me ask you this then. Do you remember getting your paycheck?

JC: Yeah. I remember getting my paycheck on the 16th.

WP: Now, when you saw this fight, was it before or after the paycheck?

JC: I think it was right after I got my paycheck. I can't be precise on it.

WP: Do you know if it is the same night as when you called Ed and Barb?

JC: No, I just know it was around in that area.

WP: Around in that time?

JC: Yeah.

WP: When you looked out of the corner of your eye and saw this, okay, what did you see?

JC: I just seen some guys over there scuffling.

WP: Now when you say over there?

JC: Then there's three guys on one guy, alright. Then I seen the guy fall and I said, "Not me," and I left. I went on about my way. I wouldn't give fuck to anyone if I was () in that parking lot that night.

WP: You saw three guys.

JC: Yeah. One guy ran that way and two guys ran down, you know how the parking thing is, one was a big Ford LTD, I know what kind of car it was. The other was some old raggedy () station wagon. The one took off heading

the other way.

WP: Now, was he in the parking lot ()?

JC: The Dome Building.

WP: Now, there's two circles there.

JC: Man, I was standing out here on the sidewalk. There's two circles. There's one right here and there's another one right over there. They could be by the first one or they could be by the second one. So it'd have to be in between them. It wasn't that close to the fuckin' door, I know that 'cause I looked up the driveway and it's just like a little past there when I caught it out the corner of my eye. Yeah, I just seen the guy running. It wasn't that far of a run. One guy just took off between (). I seen the guy fall and that was it. I was on about my business. Just like I stated, I wouldn't give a fuck if the guy was murdered. It wasn't me involved in it. I walked by there many a night. I've seen all kinds of shit happen at that hospital.

WP: This is what you told Stan Groom about?

JC: Yeah, that's what I told Stan about. And I'm thinking in my mind, was it the 17th or was it the 21st? That's what I told Stan.

WP: Well, the bottom line is, do we know when that happened?

JC: I can't be precise.

WP: When you got arrested on April 1st, and that was the deal then at the Chumaree or something like, city police?

JC: Um-hum.

WP: Okay. You made some statements after that. A whole bunch of statements on your involvement in the murder.

JC: To who?

WP: State Police here.

JC: Shit.

WP: And you talked to a couple three different guys. Were you telling those guys the truth?

JC: I told my brother prior to me getting arrested, my brother Larry, I said, "They're going to put a murder on me in the Michael Francke murder case." From the 18th of February to April 1st, there was somebody going around trying to check all my friends out. I called a friend of my friend and said don't even come around. I said, "What's the matter?" and they said, "Somebody's here."

WP: Let me ask you the question again. You made those statements about your involvement in the murder.

JC: False statements.

WP: Why?

JC: I just thought in myself, they're going to nail me for this.

WP: Why would a guy want to put himself on a murder rap?

JC: No matter what I say, when I get to court, I can do it anyway.

WP: Do you know?

JC: I was talking prior to anything I've ever been ruled out, anything being on page, as Martinak said, what he said to me, fuck no, he hasn't. Has these guys said anything about it. No, they don't say nothin'.

WP: Well, let's not get,,, you've made a lot of statements in the past.

JC: They made a lot of statements to me in the past, too. That nobody has on tapes.

WP: Okay, well, we know that...

JC: All they have on tape is what I said after they had told me the shit they had told me.

WP: We know this is on tape, though. Right?

JC: Yeah.

WP: And so, we're affording you the chance now with your counsel present, did you have any involvement in the murder?

JC: No, I had no involvement in the murder.

WP: Okay. Can you explain to us why these statements came out later about your involvement in the murder?

JC: I took a second polygraph test and failed it. Right?

WP: Now, I don't want to know....

JC: I'm trying to lead up to something here.

WP: Okay.

JC: Right. And I know Pecyna and I know Glover will list this fuckin' tape and I don't care. That's what I don't have them in here with me right now. Right? Martina said Pecyna told me everything about the murder. Now where Michael Francke was stabbed. I know where Michael Francke was cut. I know where the body was. I know where his car was. I didn't know none of that when they brought me over there the first time. None of it. They just took me in there and they talked to me, five hours, before a tape was even put on.

WP: Okay.

JC: And they said, you look exactly like the guy that was pointed out. Why do you think I'm not sitting there in front of that two-way mirror?

WP: Let me go back to my question now. Why did John Crouse tell these guys that he was involved in the murder?

JC: To get them off my ass.

WP: And that's it?

JC: That's it. Once they told me everything about the murder, I knew I could say goodbye. I put it together. And I'm not telling what helped me put this case together.

WP: Did you talk to anybody else that helped you put it together, in the meantime?

JC: No.

WP: Before you were arrested on April 1st? Did you ever talk to Buck about it?

JC: I went and asked Buck, I said, "What did the investigators ask you about the Michael Francke case?"

WP: What did Buck tell you then?

JC: Buck said, "He just asked me the usual. Where was I at? and all that." You know, they asked him all that.

WP: Now, let's go back to Buck for a second. What did you talk to Buck about? Do you remember?

JC: I just pulled him off in the other room and asked him what they asked him.

WP: How do you know that anybody talked to Buck?

JC: He told me. He said they asked me about the Francke case.

WP: Did he tell you what they asked him about on the case?

E. R.-1204

JC: The just asked him where he was that night and all that. When Buck talked to me, he was real loudly.

WP: Friendly or fidgety or he was nervous?

JC: Yeah.

WP: Okay. About what? What was Buck nervous about?

JC: I asked him, I says, "What would you do, you know?" 'Cause I know Buck, and Buck had these two kids living with him and I never seen Buck drink or do drugs the whole time I was out 'cause he told my old lady he wouldn't stand for it and none of that. Buck said, "I have to ask you not to come over here anymore." I said, "Okay." So I quit going over. Then one night I went over there and he didn't seem the same. He was just nervous and he said, "I think I'll need TOPS this weekend. Me and Mike was thinkin' about going out () this weekend.

WP: Now, you're talking Mike? Johnson, right?

JC: And I left. That was it. Then I went back again after they interviewed me the first time. He said, "Did they say my name?" I said, "No."

WP: Okay, so you talked to Buck before they interviewed you the first time?

JC: Yeah. Then he just seemed real nervous and I went over there, it was right around in that time that I went over to Buck's house. It wasn't with Mike. Mike was doing something, 'cause Mike stopped over to see me, right around in that area. 'Cause me and Mike, Mike would come over when his wife would leave to go with a friend shopping or something; Mike would just come over to see me. And I can't remember if he got the knife after the 17th or before the 17th from Lucinda. That was her knife; I had no control over that. 'Cause he said he just wanted some money for some cigarettes. And me and Mike never talked about it, about the Francke deal.

WP: When you talked to Stan Groom about seeing the fight, how many times before that do you think you saw Buck and talked to him about this?

JC: Just a couple.

WP: A couple of times?

JC: Yeah. 'Cause I quit going over there for a while 'cause of a conflict that he got started between me and Mike. And Mike came over to me and asked me about it and I told him, "Well fuck it; I'll just go over and tell Buck about it myself." And Mike said, "John, you don't want to do that." I said, "Fuck you." And so I waited a couple of days and I went over there and that's when I had to go talk to him. He said, "Look, I've been fucked with all day. I've been into the investigators office. They're asking me about the Michael Francke case and all." () Him and his bitch old lady. And, so I just left. And I went back a couple of days later to talk to Buck while his wife wasn't home. That's when he was acting all weird on me, you know. Because at that time, 'cause he started keeping guns laid out in the house and stuff. And he'd never had

E. R.-1205

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WP: Did we tell you what they talked to him about on the case?

JC: He just told me, he said that they told him that they found the knife over by (end of tape)

WP: Now we've got a fresh tape in; let's make sure we've got it on the tape. You talked to Buck about what the police had talked to him about the case. And what was that about? What did they talk to Buck about?

JC: About the Michael Francke murder and what he was doing on that night. I noticed around at his house, he had a couple of guns laid out or something like that.

WP: I think we got that. What specifically did they ask him about?

JC: What he was doing. Where he was. If he could account for where he was that night.

WP: Okay. You mentioned a knife a few seconds ago. Did you talk to him about a knife?

JC: Yeah. He said the investigators told him they had found the knife by a garbage can. I don't know; this is what he's telling me.

WP: Okay. Did he show you where, or point to, or give you any idea where they found the knife.

JC: He said, he just said trash can. He said right there at that drive-in, driveway. He said that's where they said they found the knife.

WP: Now, when this conversation took place, was that before or after you talked to Stan Groom about the fight you saw that night?

JC: That was before I talked to Stan Groom.

WP: And then when you talked to Stan Groom about seeing this fight, you were interviewed after that. Did you walk back through that area or something with a couple of policemen?

JC: Yeah. That's why () actual area where Buck told me that the knife was supposed been.

WP: How did that work out? How did we get Buck's knife in that story?

JC: Well, Buck told me that this was where the knife was. This is after Buck talked to me, that I had my interview. So, I knew possibly where Buck said his knife was laying.

WP: Now,

JC: Th where Mason told me. Yeah, there was a knife d out in that area.

WP: Let's clear up one thing here real quick. So we make sure we're talking on the same wave length here. Is it, when you walked by the Dome Building on Center Street coming back towards the Monterey, on some night, we don't know when, you saw a fight with three guys and then when you talked to Stan Groom and you walked the detectives back through the field over there, you added in this knife? That wasn't the same thing. You understand what I mean? Was that the same; when you saw this fight, did that involve that area over there?

JC: No, I seen a guy run towards that area. Actually, that's the only way to go; once you go around that building behind the Dome Building, that's the only way you got to go out. Just as you've been over there enough times yourself to know that.

WP: So the thing about the, when you saw the fight, you saw one of these three guys run that direction?

JC: Um-hum. Right between the Dome Building and the other building, there was a guy; I don't know what the building is.

WP: But it didn't have anything to do with the knife?

JC: No.

WP: And you had that information from?

JC: Buck.

WP: Buck. Okay, now let's jump back again to what we're talking about a few minutes earlier. You were arrested on the first of April for, do you remember what that was?

JC: They claim it as Assault IV.

WP: Okay. And you were interviewed by who? Do you remember who you were interviewed by originally on, when you talked about the Francke case?

JC: Chris Siegel. No, it wasn't him. Martinak was the first guy.

WP: Okay.

JC: Then I asked for Glover and Glover was on vacation so they had Pecyna over here.

WP: Okay. Do you remember what you told Martinak?

JC: I can't remember everything I said to him.

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WP: Do you remember what you said to him that involved you in this case?

JC: Nah. I've pretty well put this case out of my head. I've for the last three months.

WP: When you talked to Martinak, was anybody else there?

JC: A woman. I told her I appreciated the woman wasn't there, so they pulled in somebody else. That's when Pecyna came in. Because originally before they brought me over here, I knew somebody was going out and talking to all my friends trying to do a back-up on me for my first interview and so I stopped going and seeing a lot of my friends and while they was interviewing me, here they area, they're interviewing Cindy Hathaway at the same time. I didn't meet Cindy Hathaway until the 17th or 18th of February and that's when she was having trouble with her husband and there was nothing ever said to Cindy Hathaway about this case. I have never said anything about any of () about this. Then, at that point of the interview, the investigation that was going on then, Cindy said, "Do you know they're trying to tie me in as the person who drove the get-away car?" Cindy was able to see me during my investigation. Alright? And now they won't let her see me. And she told me that they have photographs of her that I sent to James Lamar and all that. Alright? And I didn't hide the fact of what kind of work she did or any of that. And I told her that. I didn't hide it from my friends 'cause I didn't care. And she said, "You know they're still going out and investigating your friends?" She said, "John, did you do the murder?" I said, "Look, Cindy, I wasn't there." I said, "If I would have did a murder, I sure as fuck wouldn't have stayed in this town." And I told Cindy, I said, "You don't know but I was on the run from the day you met me." And I was still with Nancy, alright? Then I broke up with Nancy and me and I started staying with Diane for 45 days with Cindy. We stayed at a motel and then at her grandmother's. Occasionally I'd go out and see my friends. She had her business to do and I had my business to do. I called Stan at the end of February and Stan said, "Why don't you come. I'm going to put a warrant on you." As soon as he said warrant, I said (). 'Cause I told Stan, I says, "Stan, I don't want no part in no murder." And between that time; that's when I called my brother and that's when my brother what's going on. I told my brother. Matter of fact, I even called my brother, Richard, and I asked my brother Richard, I said, "Do you know where I can get a pistol?" And my brother said, "Why?" I said, "That's none of your business. Just tell me how much I need for a pistol and I'll send you the money for the pistol." And he said, "Don't do it, Johnny. I know you're going to go on a murder case." I called my brother; I even called my mother and told my mother, "I'm gone," and then my mother asked me what it was about and I explained to my family what it was about. I said it's on a murder case. And I told my mother I was afraid that I was going to get convicted of a murder and my interview when I came over here through that 30 days, they told you look just like the guy we have composite drawings of. Alright? Right around in that time, Armenakis and another guy was at the Circle K right down there. I know Armenakis; I know what he looks like. Right? I can't say if he was there or his involvements in it.

WP: Okay, let me ask you something. We went over a lot of this stuff before and you know, you had different things. And what you think happened, you know, is different from what I think happened or your attorney, or Ranger thinks what happened. You know, we all kind of have our own ideas of how things happened. Okay? Whether it's this or something else. But we have to focus on is what actually happened that we can be sure of. Okay? If we're going to put John Crouse out of this now, and we know you've made all these statements about how you're involved, can you give us someone or something that we can find that will account for your time on the 17th?

JC: I really can't.

WP: Okay, that's fine. I mean, you know, so then

JC: All I can say is the people you already talked to, Debbie Hollowpeter, and you know, I can't remember what day I went out to Ridgeway. I might have went out that day to see my....

WP: Well, what might have happened, we know about, but

JC: I can't be...

WP: Alright, that's fine. But you don't remember anything specifically that night?

JC: No. I wish I could, but I can't. I've run over this in my mind for weeks.

WP: Okay, tell me again why you told Stan Groom when you saw him on the, I believe it was the 14th of February, about the

JC: 'Cause of a fight that I seen.

WP: Okay.

JC: In the parking lot of the Dome Building. I wasn't for sure, in my mind, I didn't tell him what day it was. I just told him that I seen a fight over there and that it might be helpful.

WP: Okay. Then let's jump back to the, I think it was the 4th of April, you were in jail a couple of days after your Assault, when you first came over here and talked.

JC: I was there one day. Then I was over here.

WP: Then you were over here?

JC: For the next 35 days.

WP: Okay, you came over here on a number of occasions and you talked to different detectives. Did you tell them that you had killed Michael Francke?

JC: Yeah.

WP: And now, you're telling us that you didn't kill Michael Francke?

JC: No. When I came in to talk to Mason, I took a polygraph. They take a polygraph. I denied the polygraph test was a mistake, so I don't want no polygraph test. I took a polygraph the second time I came in and I knew I passed

E. R.-1209

JC: () being just about all that I c recollect.

WP: We have the knife business out there, so you talked to Buck about it.

JC: Yeah. And Mason. I talked to Mason.

WP: Did you talk to anybody besides Buck?

JC: No, not that I can recall.

WP: Is Buck the only guy that's not a cop that you talked to about this?

JC: Yeah. What I can recollect. In fact, I'm specifically don't know if I talked to Buck about it. To anybody else; I went over to, after my first interview, I went over to David's, his girlfriend's and I says, "Do you know they called me in and interviewed me about the Michael Francke case?" They said, "No." I said, "Yeah."

WP: Who are you talking about now?

JC: Dave and Elsie.

WP: Who are Dave and Elsie?

JC: Lucinda's friends.

WP: Where do they live at?

JC: I don't know the address.

WP: Do you know the last name?

JC: I just know them by Dave and Elsie.

WP: Where were they living at approximately?

JC: I know how to get to it. I don't know the address.

WP: Across from the store over here? Is that the one you're talking about? This area there by the creek?

JC: That little market up here, the hang-out market. Just go down that street all the way and then you get to a four-way stop right there and on the corner house there's a van that sits there.

WP: At that corner house at the four-way stop, you talked to Dave and Elsie?

JC: There was quite a few of us there that night when I was talking. There was Dave, me and a couple of 'er

WP: Do you know who else was there?

JC: No. In fact, I didn't know anybody was always at the house all the time. And I said, "Would you believe the information that came to me about the Michael Francke murder?" And that was after my first interview.

WP: Now, at that time have you taken a polygraph when you talked to Dave and Elsie?

JC: I can't remember if I did or not.

WP: When you say first interview, is that when you went with Mason and you walked through the field there?

JC: It was, if I remember right, I called my brother and my mother, called somebody in my family and told them I just got investigated in the Michael Francke murder. That's when I was living out in south Salem.

WP: When you talked to Dave, did he know anything about the murder?

JC: No. I don't know too many druggies or alcoholics that pay much attention to anything. That's why I don't like to mention a lot of the people that I know 'cause I know what they do and I don't think it's nobody else's business what they do. I know how I was and I don't () out on me.

WP: Well, maybe it's an appropriate time to clarify one thing here. Do you know who murdered Michael Francke?

JC: I've got ideas but that's it.

WP: You do not know who murdered Michael Francke?

JC: All I know it was not Johnny Lee Crouse that killed Michael Francke.

WP: Has anyone ever told you that they murdered Michael Francke?

JC: No.

WP: Has anyone ever told you that they know someone who has murdered Michael Francke?

JC: No. All I know is since I've been in () officer says, "Why can't they find the person that was with Nick Armenakis that night?"

WP: But you don't know who killed Michael Francke?

JC: No. The only reason, like I stated before, the only reason I know about this whole case is it was pointed out to me and what was said to me prior to anything that went on tapes. 'Cause they brought in the pictures and they

pointed to the spot that the car was at and all that. When I took the second polygraph test, I knew I couldn't pass. The guy asked me, "What you holding back?" I told him, "Nothin', I ain't holding nothin' back." 'Cause I knew at a point that I'd passed the polygraph test. With what I knew at the time and what I still know about what they have told me, I cannot pass a polygraph test. And I know that. There's no way and being a criminal, I could put together what I know about this case unless I was told about it. Not by reading the papers or anything.

WP: Do you read the papers?

JC: () gettin' fucked by a pack of lies. I have had people come up to me since this whole case, watch the news; they got the Francke case. You're on the news. Read the paper; you're in the paper. I said, "Look, I don't give a fuck what's in the paper. I don't care what they say on the fuckin' news." I was asked a time or two from a couple of officers that had known me over the years, they said, "John, what do you know about this?" I said, "I know what I was told by policemen." I called an officer that works at OSP every once in a while and talk to him. () right now. And there was a drop in the conversation and he said, I told him about the interview and stuff, and he said, "John, I know you didn't kill that guy." And then when I found out that after my interview that everybody that supposedly I'd been associated with is getting investigated again, then I told myself, "Fuck this, I'm gone." 'Cause it was, I'm not saying that all the people that you talked to, all these people other people talked to, are righteous good people or anything, but a lot of them was doing me. And I ain't flunked here. So when I got out and people asked me; I had a lot of people ask me, "John, did you kill Michael Francke?" I tell them, "No, I don't know nothing about the case." And when I came in here and I was getting interviewed about the case, I knew it all.

WP: When you walked by, you saw the fight. Do you think that fight had anything to do with the murder?

JC: That was my idea. Like I said, I can't remember what night it was. I kind of heard what happened. Maybe I might be able to say something and that's when these two, when I was told, "You're a fuckin' liar." () When I came in here and they told me about everything, I still didn't give a fuck. I've been doing time for 20 years. All I know, since my investigation happened, this investigation (), I don't much give a fuck about anybody () behind it. My mother was contacted; they tried to contact my mother just last week about me on this case again. My family has nothing to do with it. My friend has nothing to do with it. But still I know people are going to go out and finish talking to my friends about it.

WP: Well, let me make one thing clear here. John Crouse, because of some of the statements that you've made, some of those things that you've said in those other interviews, put yourself down.

JC: Yeah.

WP: Let's talk about that fight for a minute. What did you see?

JC: All I seen was there was a fight going on; there's three people. I seen a guy fall. I seen one guy run one way and two guys running and jumped in cars and took off. That's all I could really recollect of the fight, but I know I seen the fight that happened that way. I just go on about my way. I don't want no part in fuck nothin'.

WP: Whi i saw this fight and they guy fell, do you re. : what anybody looked like?

JC: One guy was sort of a heavy guy; the other guy was sort of a medium build guy. The guy that fell, what did he look like?

JC: I just seen some figure going to the ground. I can't say what he looked like. Then I was on my way after they took off running and they was gone. I was just on my way.

WP: Now there were four guys. There was one on the ground,,,

JC: One that fell and then three other guys.

WP: If I marched all four of those people into the room now, could you recognize any of them? -

JC: I can't that I can.

WP: So, it's.....

JC: To me, when they said, "To leave him," it's a Spanish accent.

WP: Say that again.

JC: Well, I heard them say, "Let's go," it was in a Spanish accent.

WP: Okay. But he said it in English.

JC: No, it was in Mexican.

WP: How do you say "let's go" in Mexican?

JC: I'm not sure how he said, "Let's go," but (something I couldn't understand) but other than that, 'cause right after that word was said, I'd have to recollect that that was what was said 'cause right after they said it, they was gone.

WP: Okay. So you heard something and you think it was Spanish? and they were gone?

JC: Yep. They was no long-haired people. Short-haired guys. I got that kind of look at them but other than that I have lost description of 'em. When I was walking to the Monterey, after I seen the fight, I said, "I wonder what that was about." You know, that was the only thing that popped in my mind. And I can't say it was the night before I heard the next morning I heard Michael Francke was killed. 'Cause I mentioned that fight that I seen to somebody there at the Monterey. I can't say who, 'cause I can't remember who.

E. R.-1214

WP: So we're not sure.

JC: No.

WP: That's fine. You saw these three people split up. The guy that went down, did he stay down or did you notice?

JC: He was out. 'Cause I glanced back a couple of times. He was down. That was it. I just went on about; I figured he's knocked out. I just went on my way but when I glanced back he was still down. Other than that, I didn't pay no attention.

WP: Now, when you say he was down, was he down all the way to the grass or the pavement or what?

JC: It's hard to say through, from the sidewalk whether he was on the grass or the pavement. It was a little lighter than what it is outside now, but, so I'm seeing stuff happen at nighttime, glancing.

WP: You told me before it was dusk or was it dark, or was it light?

JC: It was like at dusk. You know, it wasn't real light and it wasn't real dark.

WP: Do you remember if the street lights were on?

JC: Yeah, the street lights were on. They was usually on when I left Stan's office. 'Cause I usually never, you see, that's the thing, I never got out of Stan's office that early. I usually get out of Stan's office at quarter to six. () part of town, I never went in until about quarter after five. Me and Stan would sit there, joke and laugh, talk about when I was boxing, you know.

WP: When you saw this fight, do you remember what you were doing before that?

JC: No.

WP: Uh, three guys leave; one guy's still down.

JC: Yeah.

WP: Were there any significant differences between the three guys? Big, tall, short, fat, anything like that?

JC: I can't recollect.

WP: The direction that they

JC: I can say that they was about my size.

WP: The direction that they went?

E. R.-1215

JC: On it through the buildings, Dome Building and the er building right there and then the other one. It down to the road right there by the hospital there, jumped in an old station wagon, and old green Buick LTD, Ford LTD, I remember the car, just passenger, () and I was gone. 'Cause see, the thing that caught me that why I brought it to Stan 'cause I took off, I ran for about 3 blocks after I got so far a distance, I thought these guys might come back 'cause I may have seen something that I shouldn't. So I took off for about 3 blocks.

WP: So you ran towards

JC: Yeah, I ran towards the Monterey.

WP: Do you know where Quisenberry's is at? Do you know where the drug store is at down there by the hospital?

JC: No.

WP: Well, let me ask you this. The street that the guys parked on.

JC: Do you know where that new sign's being built at?

WP: Yeah.

JC: It's right in that area.

WP: But where did you run from, to?

JC: I got down to the corner, right there where the building's end. I got right to that corner and I just took off running.

WP: Where did you stop running?

JC: I stopped just about a block or two blocks this side of the AA place there.

WP: The S.O.S. Club there?

JC: Yeah.

WP: Do you know ()?

JC: It's over there on Center Street.

WP: Okay. So you stopped running about the S.O.S. Club. Had these guys run to those two cars? What kind of cars were they again?

E. R.-1216

JC: One was a station wagon, () color station wagon, and one was a green LTD four-door.

WP: So they were kind of ahead of you then?

JC: Yeah.

WP: Had they driven off before you started running?

JC: Yeah. Yeah. 'Cause they went to the light, they got to that light right there and turned and that would be, they turned left.

WP: Okay, one thing that we haven't gone over, that we need to clarify here. When you said that you were involved in the murder, on a couple of occasions. Machine can't see you nod your head. Is that true?

JC: Yeah.

WP: Okay. Then you said you were not involved in the murder. And then you said you were involved in the murder.

JC: Right.

WP: Okay. What went on there? Why did you say that you were; then you weren't; then you were? That's something that's given us all a little bit of heartburn here trying to figure out what's going on in John Crouse's head.

JC: I guess at that time a lot was being said by me, that I knew about the case, the second time. When I told them the first, at first I said, "Now, I don't know nothing about this case." And me and Pecyna almost got in a fight in that room over there behind you guys. It's like, the expression on his face, we done told you anything about it, you know, him and Martinak. And they did this for about five days. I said, "Okay, yeah, I did the murder," so they'd get off my ass. And I told them, I says what you have now to get me convicted would take two (). That's exactly what I told them, and when that Forbes was taking me back and I told Forbes, I said, "You know they told me everything about this case," and Forbes didn't say nothing.

WP: Okay, then what happened? Why did you say that you didn't do it when you were asked about that?

JC: 'Cause I knew I didn't do it.

WP: Then why did you change again?

JC: 'Cause I knew they'd just keep on driving on me all the time. And I knew they was going out and was messing with my friends and family, I just told them 'em I did it and my Mom says, "You going to take a fall, huh?" I didn't say nothing to my Mom. Then I stopped calling my Mom. I didn't have no contact with my Mom for quite a while. And when I called her again, she says, "You still going to take this rap?" and my Mom said if you even knew who did it, you wouldn't tell me and you wouldn't, and I told my Mom, I says, "I don't know." I told my Mom, "I'll talk to you later." Then I talked to my brother and my brother says, "You know, I know you didn't do this crime,"

and said, "Why you doing it?" and I said, "They told me () that I know who did it and all that," and I told my brother, "I don't know who did this crime but they want to believe in themselves that I know who did it." Then when I first took my first polygraph test, Buck told me, he says, "You're leaving something out in this case. You know something, but you ain't saying nothing." That's when I just realized that I knew if they caught me and they started investigating me, that I'd just get some bullshit and if they should ask, I'd say, "Yeah, I killed Michael Francke." After Martinak and Pecyna told me the whole case. Then I knew at that point in time, if I was to go into court and all that, then Pecyna and them kept on saying, you're still leaving something out, and I was getting frustrated with it and I said, "Fuck, I didn't kill the guy." You know, I said, "I burglarized the car and he caught me in the act of it." And I was just tired of dealing with it. So, I knew when I was talking to them the first time, I was telling the truth. Then here they bring all these photographs and get to talking to me about it and they told me everything that happened.

WP: Let's go back to the fight. And this is really important for you and it's really important for us. You told Stan Groom about seeing that incident on the 14th of February, a month after the murder.

JC: Yeah.

WP: Did you see that incident a week before you talked to Stan?

JC: No, it was a while before I seen Stan. It wasn't a week or two weeks. It was about three weeks before I seen Stan. 'Cause it happened on a night after I seen Stan Groom. I can't remember if it was on a Tuesday or Thursday. That's when,,,,, 'cause I was thinking about it when I went out to see Stan that day and I told Stan, I said, and Stan says, "What's bothering you?" I said, and that's when I told Stan. I said maybe I might be able to help in the Michael Francke case. Then that's when I told him about the fight.

WP: Okay, when you saw this fight, was it after you were paid at Highway Trailers? or before?

JC: It was after.

WP: Was it before or after you went to the hospital with stomach problems? or do you remember?

JC: I can't remember whether it was or whether it wasn't, but also there was a time when I was thinking I didn't go see Stan. I didn't pay much attention to what date that was; all I knew was I was to go out Tuesdays and Thursdays to see Stan and....

WP: You saw this incident coming from Stan's?

JC: Yeah.

WP: But you don't remember what you did before that? Were there times that you went, like you said before, and just saw Buck? Do you remember if you saw Buck before the fight?

JC: Yeah, I seen Buck before the fight.

WP: No on't make stuff up for me here.

JC: I seen Buck a lot before the fight.

WP: Oh, okay.

MR: Before you told us that you don't remember seeing Stan Groom on the 17th. So now you're telling us that you saw this incident after you saw Stan Groom. You remember seeing Stan Groom. So which is it?

JC: See I'm not saying it was on the 17th that this happened.

MR: I know, but you just said, you know it happened the night after you saw Stan Groom.

JC: Right. And I'm not saying it's on the 17th.

MR: I know. But listen to me. See what I'm saying. You already said you don't remember seeing Stan on the 17th. Now you're saying you saw this fight on the night you know you saw Stan Groom.

JC: Right.

MR: So, the way I'm looking at it, and maybe Bill is, it couldn't have been the 17th, 'cause you didn't recall seeing Stan the 17th.

JC: That's right. It couldn't have been. I'm not saying, I'm not saying this probably happened on the 17th either.

MR: I know. We're trying to help you jog your memory here.

JC: I'm not saying that it did happen on the 17th. All I'm saying, is I brought it to Stan Groom's attention.

WP: Okay, after the fight, did you ever see anything or hear anything about the fight?

JC: No. Actually, that's the truth. Unless something happens out there when I was out, I didn't care about. All I cared about is I was free and I was trying to make it. Alright. Then I just went into Stan and I tried to explain to him on the night that I seen the fight and I'm really thinking about the 17th or nothing, Michael Francke case. Maybe I might have something that might help. That's all I told Stan, whether it was on the 17th or whether it was on the 26th, I don't know.

WP: Did you see Stan on the 26th?

JC: I don't know.

WP: You just threw that date out then. You don't know.

JC: Yeah. All I know is 95 percent of the time I was seen when I was supposed to see Stan and that I had in my head that I was going to do; that I was going to make it, 'cause Stan Groom had faith in me; saw that, "If anybody could do a parole, it could be you." 'Cause that's what I was busting my ass to try to get everything done that I could get done. Then after my first interview, that's when I said I don't care.

WP: That's fine. So, we're not sure when the fight happened. Are we sure when the phone call happened to Ed and Barb?

JC: Yeah. I know on the night of the 17th. 'Cause I know I was at work that night 'cause I wanted to say I was there all night, but I can't say for sure that I was there all night. I might have went down to see David and his girlfriend. See, that's the only problem. See, I can't give specific times. I'm not sure and, you know, all I know is that I was there the next morning when I heard and that they said it twice on the radio, if I'm right, if I'm correct, that Michael Francke was murdered at the Dome Building and that was it. When I came in ().

WP: Anything else?

JC: No.

WP: Anything else you want to tell us?

JC: The thing that's standing out in my mind is why Martinak and Pecyna told me so much about the case.

WP: We don't really care about that. The bottom line is like I told you before is that you said you were involved and that we were bound to follow up on that and that's what we're trying to do now.

JC: I didn't kill Michael Francke. I wasn't there. I don't know anything that's involved or why he was murdered or anything. My conversations with Kevin and Pat, they asked me, "Where was you on the night of the 17th?" I said, "Look, I don't know why your brother was murdered. I might have suspicions why your brother was murdered, but I'm not involved in the murder."

WP: Well, anything else?

JC: That's the reason I asked for two other investigators. I don't think I was wrong in asking, because to me, me asking for two other investigators, 'cause I know how much contact you guys have with the Penitentiary. I don't know what kind of contact you guys have, but I guess that's a chance I take.

SG: Mark, are you from here?

MR: No.

SG: Come over from Bend?

MR: No I'm from Roseburg. Seems like I'm from here though.

SG: Probably.

JC: As much as you're here, huh?

MR: I don't know, John. I'm still confused, though, about this fight. Is it possible it could have been some place else where you witnessed a fight like that, and you're thinking maybe it was in the Dome Building?

JC: Nope.

MR: You're sure it was near the Dome Building?

JC: Yep. I was even involved in a couple fights when I was out there. That's a whole different case, you know. You guys don't know what it's like getting out of the Penitentiary, you know. I just got out of jail eight years. I was all over this town, day and night, you know. Just walking, doing as I fuckin' please. Just knowing I could take off and go when I wanted to go, you know. I knew that I was supposed to be in at 9:00 and 10:00 o'clock and all that.

WP: Okay, let's go over a couple of real quick things here and we'll get out of here. Alright? In your original statement, and there's a lot of stuff there, so sometimes we have to, you know, get our heads together, you said that there were five Mexicans that you chased for three miles or something like that.

JC: I never said I chased, I said I chased one Mexican.

WP: Okay. Why was there five Mexicans? I mean, what made you change the....

JC: I don't remember ever saying five Mexicans. Ever.

WP: You know how some guys, you know, tell a good fishing story and the fish keeps getting bigger. Have you ever told those kinds of stories to us where they keep getting better?

JC: Yeah.

WP: Why?

JC: I don't know.

WP: So, do you remember saying five Mexicans? Could you have said five Mexicans?

JC: Could have, but I don't remember it.

WP: When you made that statement, you know to Stan, and then you were involved in the interview, when you talked about

see this incident, did you embellish.....

JC: I made it bigger than what it was.

WP: You made it bigger than what it was. Okay.

JC: The same fight that I'm talking about, that I seen, that's the one that I made bigger in the story. I did see a fight. I seen one guy fall and one guy run and two guys did go to the cars.

WP: When we talked about people that you've had conversation with about this. We talked about Martinak, Pecyna and Buck, okay? Now in one of those statements, you told us that Buck had killed Frank. Why did you say that?

JC: It's just this tuition that I have?

WP: Do you have anything to base that on?

JC: From what I know of Buck, Buck is possibly anything. And I know how in some of the ways Buck feels it and after his interview and all that and the way that he acted, you know, it's like he said, "I like to tell you something, but I can't." It's just the way that he was.

WP: Has he been that way to you in other things?

JC: Me and Mike Johnson and him went out to this one place and Buck said that some guy's chasing him and Buck had to pull his knife on him and all that. 'Cause every place that Buck goes at night, he carries a knife, you know, and the way that he was acting and stuff, and I went over after the interview, he was just scared shitless and he said, "John, I don't want to go back to prison."

MR: Do you have anything concrete that tells you that Buck did it?

JC: No, not exactly. I couldn't say. All I could go on is the way that he acted after the interview.

MR: You go by gut feeling?

JC: Yeah, and what I know about this Buck. And I know Buck would stab the son-of-a-bitch in a minute.

WP: Okay. Let's switch gears and talk about something else. We talked about people that you had conversations with; Buck being one of them. You said there was no one else that you had conversations with about the murder. See, I know that's not so, because I have talked to people like Penny Fox, Nancy Smith who said that they had conversations with you. Do you recall any of those?

JC: I don't know if you'd call them conversations. Is all I told him is that I had no problems. There wasn't any conversations about the case, I can't recollect. I just told Penny, I said, "Look, they're going to try to put the murder on me and I'm tripping off." And Penny says, "Well, I won't tell them where you're at." Penny didn't

ever want to know where I was staying. She knew where I was staying, 'cause she took me to the motel room.

WP: Did you ever have a conversation with Penny about who killed Michael Francke?

JC: Not that I can recall. I may have.

WP: How about Nancy?

JC: No.

WP: Never talked to Nancy?

JC: Not that I can recall. After my interview, I just told them () and then they said, I was asked by quite a few people, "Did you kill Michael Francke or do you know who did?" and all that.

WP: So, what you're telling me now is that there was a bunch of people that talked to you about?

JC: They asked me. But there was no great discussion about it to any of them.

WP: Did you ever play any head games with them, like maybe you knew something about the case?

JC: No. All I told them, is I knew I wasn't involved. That's what I told ever last one of them. I know I was at the Monterey. That's what I told 95 percent of them, of anybody who's asked me about the case. Some were straight out, asked me, "Did you kill Michael Francke?" I was working at the Monterey, see, and I tried calling Monterey myself but they don't take my calls and that's been a while back, 'cause I was going to talk to employees there because I didn't always check. You know, the only time they had timecards and that when you started work, when you got off. I never filled them out and I don't know if Debbie remembers me sitting in the office; I'm pretty sure that she does. And the Francke case came up in the office a lot, but I never elaborated on it that I can recall. I remember saying one time, "Why would they want to kill somebody that's trying to do something for the institution."

WP: But you could have had a conversation with Penny? And you could have had a conversation with Nancy?

JC: Yeah.

WP: How about Cindy? Never said anything to Cindy?

JC: All Cindy was told is one time that I was investigated by the Michael Francke case.

WP: How about Lucinda?

JC: No.

WP: Are g else?

JC: That s the best as I can tell you was what I was doing at the time and who I called.

WP: Well, the whole thing really is why you lead us down the Primrose path with this story about your involvement.

JC: From what I knew the first investigation happened, I knew it wasn't over and when they kept on hounding me and I just said, "Fuck."

WP: Okay. When word got out that you were involved in the Francke murder, what did that do to you status across the street?

JC: Nothing.

WP: The guys give you a little bit...

JC: 95 percent of the inmates over there () Michael Francke case. They ain't much scared. They're doing time each (), you know. That's the attitude. I've had people write me of stuff that they were supposed to have known and all that. I told people, I don't care. I just want to be left alone. I have one guy that I associated with all the time that him and I don't even talk about this case. Never had. He knows that they've; I've told him about my interviews; how many times they have taken me down here and all that. He elaborated some experience. Matter of fact, one of his friends was investigated because he loaned enough money that she sent me and all that. Other than that, there's nothing being said.

WP: Okay, let's cut it off here. Let me ask you one thing before we finish. Your attorney's here with you. If we come up with something in these conversations about where you were at, something we can verify, will you be willing to talk to us again about it, like you are now?

JC: I have immunity from this. The only thing I don't have immunity for is direct involvement in the Michael Francke case.

WP: Okay. You're willing to talk to us again about it?

JC: Sure.

WP: Because if we come up with something, you know, you might be able to help us out on where, you know, you were at and some of these people so if we come up with anything, we might like to talk to you again. Okay?

JC: All I want to try to do now is with my attorney said, "John, you don't tell enough."

WP: Okay. Well, that's what we want.

JC: Well, that's the truth. That's why I came in here. I can't give specific dates of where I was. If I can't

re , I can't remember.

WP: That's fine. If you can't remember. We just don't want, you know, like we were talking about the fishing story. That's got you into this thing way over your head. Okay. So, if we need to clear something up....

SG: At any rate, I'd like to clear something up. I think your original question of him concerning who talked to him or who didn't talk to him about this was, who told him about it, and his answer was Pecyna and Martinak (); not who did he talk to.

WP: Well, yeah.

SG: That may just be the difference of phraseology, but just so it's clear, I think he answered two different questions.

WP: Okay. Well, I'm off the tape. It's 5:31. Same date - November 30, 1989.

JC = John Lee Crouse

WP = William J. Pierce, Detective OSP

MR = Mark Ranger, Detective OSP

SG = Steve Gorham, Attorney for John Lee Crouse

E. R.-1225

803200

"Send me photos."

"Thanks for standing by me. (Long pause) It's hard for any family to understand."

"Just one (long pause) yea (long pause) no."

"They treated me good."

"I couldn't keep living with the guilt."

"I'll have to call Cyndi."

"I'll call Mom."

At the completion of that call, CROUSE requested that he be allowed to call his mother and advise her. This call was made at 9:44 p.m., and I left the room as that call started. I returned to the room at 9:51 p.m., and heard John CROUSE say the following:

"It was a freak accident (long pause), now I have to face it and go on."

"I'll give you Cyndi's phone number."

E. R.-1226



DEPARTMENT OF JUSTICE

CRIMINAL JUSTICE DIVISION

Sub II

002312

REPORT OF INTERVIEW

CASE/FILE NO.: CJ-OC-89-02

PERSON INTERVIEWED: John Lee CROUSE; DOB: 6/14/57
Inmate, Oregon State Penitentiary

OTHERS PRESENT: Kathryn McLAUGHLIN, Investigator, DOJ

DATE/TIME/PLACE OF INTERVIEW: April 4, 1989; 9:10 a.m.
Oregon State Police, District 2 Headquarters

INVESTIGATOR: Randy C. MARTINAK

DATE DICTATED: April 6, 1989

After a review of the reports written and contacts made in this case, CROUSE was reinterviewed as he had, by his own admission, placed himself at the scene of the crime and claimed to have observed a struggle in the area where Michael FRANCKE had been killed. I informed CROUSE that I had read some of the reports, and that I had talked with his parole officer, Stan GROOM, and that I wanted to go over his statement about what he had observed and where he had been on the night of January 17, 1989. I further informed CROUSE that I was not there to question him about the assault that he had been involved in on April 2. I told him that my main concern was the investigation of the FRANCKE homicide. I told CROUSE that I was aware that he was in custody at the Oregon State Penitentiary and as he was in custody, prior to any questioning, I wanted to make sure that he understood his constitutional rights. With Kathryn McLaughlin present, I advised CROUSE that he had the right to remain silent, and asked him if he understood that. He stated that he did. I advised him that anything he did say could and would be used against him in a court of law, and I asked him if he understood that. CROUSE said yes. I advised him that he had the right to have an attorney and have that attorney present with him before he answered any questions, if he wished

PAGE 1 OF ____

CJ-OC-89-02
John CROUSE
April 4, 1989
Page Two

002313

one. I asked if he understood that, and CROUSE said that he did. I advised him that if he could not afford to hire an attorney, one would be appointed to represent him before any questioning, if he wished one. I asked if he understood that, and CROUSE stated that he did. I asked him if he had any questions about his constitutional rights and CROUSE responded, "No." I asked CROUSE if he had any objections speaking with Investigator McLAUGHLIN and I without first consulting an attorney and CROUSE stated that he did not.

CROUSE told me that he was paroled from the Oregon State Penitentiary in early December 1988. He told me that he was required as part of his parole to report to his parole officer twice per week. He reported on Tuesday and Thursday. CROUSE said that on January 17, 1989, he reported to his parole officer's office in the early afternoon, and that the completion of his contact with his parole officer left the office shortly after 6:00 p.m. CROUSE advised that his parole officer's office is located near the Marion County Juvenile Detention Facility east of the Oregon State Hospital on Center Street.

CROUSE stated that upon leaving his parole officer's office, he walked to Center Street and then westbound on Center Street to a service station, which is located at the intersection of Park Street and Center Street. CROUSE said that there is a pay phone at this location, and he called his brother in Malcom, Nebraska, from that phone booth. CROUSE states that he thinks that he called his brother collect, and the number that he would have called would have been (402) 796-2537. CROUSE states that he talked to his brother for ten or fifteen minutes. CROUSE states that he called his brother frequently. CROUSE said that he called his brother whenever he wanted to talk, and that sometimes he called more than once per day. CROUSE stated that most of the calls that he made to his brother, and other family members in Nebraska were made collect.

CROUSE stated that after he completed the phone call to his brother, he walked westbound on the north side of Center Street back toward town. CROUSE said that as he approached the sidewalk which leaves the sidewalk along Center Street and runs to the front of the Dome Building, out of the corner of his eye, he observed a disturbance. CROUSE states that there were four or five Hispanic male subjects, who appeared to be assaulting another male subject, whom he later believed to be FRANCKE. As his attention turned toward the disturbance, one male subject fell to the ground, and the five Hispanics began

002314

CJ-OC-89-02
John CROUSE
April 4, 1989
Page Three

leaving the scene. Two persons ran to a car which was parked west of the Dome Building on what appears to be part of Griffith Circle. Two other Hispanics fled to another car which was parked along 23rd Street or Medical Way. One male Hispanic subject ran around the Dome Building on the north side, and CROUSE began pursuing that subject by running around the Dome Building on the south and east side. CROUSE stated that he chased this male subject between 2 1/2 and 3 miles. He finally lost the subject in the area of Market Street after CROUSE tripped over a small fence. CROUSE described the person as being an Hispanic who ran and walked with a limp. CROUSE stated that he was wearing his cowboy boots, but he is in good shape, and had no problem keeping up with this subject who was running. CROUSE stated that he looked around the area where he lost contact with the Hispanic male for a short time, and then walked back to the Dome Building.

I asked CROUSE how long he thought it was that he spent chasing the subject and looking for him. CROUSE states that he chased the subject for approximately 30 minutes, and then walked back. CROUSE told me that he could run a ten to twelve minute mile, and that he walked back at a brisk pace. Estimating that he walked back at a three to four mile an hour pace, CROUSE estimated that he arrived back in the area of the Dome Building approximately an hour and a half after he observed the disturbance. CROUSE states that when he arrived back in the area of the Dome Building, he saw two or three marked police cars in the area. When I questioned him as to how the cars were marked and what their exact locations were, CROUSE then stated that the cars were not marked cars, but he was sure that they were police cars.

CROUSE first advised that he had observed Michael FRANCKE fall to the ground. I asked CROUSE if he knew Michael FRANCKE, and CROUSE stated that he had seen Michael FRANCKE one time inside the walls of the Oregon State Penitentiary and had seen his picture in the newspaper numerous times. I asked CROUSE how Michael FRANCKE was dressed at the time of the disturbance or assault that he observed, and CROUSE told me that Michael FRANCKE was dressed the way Michael FRANCKE always dressed. I asked him how that was, and he said that Michael FRANCKE was dressed casual. After further questioning, I determined that "casual" to CROUSE meant in a sport coat with a shirt and tie.

I asked CROUSE if he ever had personal conversation with Michael FRANCKE, and CROUSE stated that he had. CROUSE stated that when Michael FRANCKE was touring the institution, he spoke with Michael FRANCKE and advise FRANCKE that he wanted to get a

CJ-OC-89-02
John CROUSE
April 4, 1989
Page Four

002315

change in custody. CROUSE explained that he spent all of his time at the Oregon State Penitentiary, and at the time he was attempting to get his custody changed to the farm annex or forest camp. CROUSE claims that he approached FRANCKE and asked him about getting to the forest camp, and FRANCKE advised CROUSE to go through his counselor. I asked CROUSE who his counselor was at the time. He said it was a person named HERNANDEZ. I asked CROUSE if he had approached HERNANDEZ and I asked for a change of custody, and CROUSE stated that he did contact his counselor, but the counselor did not do anything.

I asked CROUSE where he went after he had returned to the Dome Building and observed what he thought were plain clothes or unmarked police units. CROUSE stated that he did not make contact with the police, did not tell them what he observed, and he merely walked back to his residence. CROUSE advised at the time he was living at the Monterey Apartments on Ferry Street. CROUSE stated that he was sure that the police were at the Dome Building by 8:30 p.m. to 9:00 p.m. I asked CROUSE why he chased the male Hispanic that ran around the Dome Building and away. CROUSE stated, "Well, I couldn't very well catch the people that were getting into cars, could I?"

CROUSE explained that he had been incarcerated at the Oregon Penitentiary for almost eight years. He said he spent the last three years away from the general population in "ad seg" (administrative segregation). He described himself as a person who wanted to be along. CROUSE told us that he was thirty one years old, and had spent twenty of those years locked up. CROUSE told us that he had been in juvenile facilities and the Nebraska State Penitentiary.

I asked CROUSE what he was doing time in the Oregon State Penitentiary for, and he advised that it was robbery. I told him that I had looked at his file, and I was aware that it was robbery committed with a knife. CROUSE further stated that he has admitted every crime that he has ever committed in Oregon, and that he is basically "cleared the decks" each time that he has been arrested.

I advised CROUSE that I thought that the use of a knife against a person was a personal crime, and that a person had to be very close, and had to look directly at his victim. I also told CROUSE that I thought a knife was a rather unreliable weapon in that the person would have difficulty killing a person with just one stroke of a knife. CROUSE disagreed with me, and stated that he knew it could be done with just one stab. I asked him if he had ever stabbed anyone, and he stated that he had not; however, he had been in the Penitentiary and

*freed from guys called
these ladies who found
nakes car open and went
in
use know, why to make
many details*

002316

CJ-OC-89-02
John CROUSE
April 4, 1989
Page Five

observed knives used by numerous persons. CROUSE informed me that he thought he could probably kill a person with one stab. I asked CROUSE if he had ever killed anyone, CROUSE stated that he had not, but he figured that if he did, he thought that he would most probably would not be caught. CROUSE told me that if he was going to kill someone, it would probably be the guy who killed his sister's children in Nebraska. CROUSE told me that was the reason that he could not go back to Nebraska. I asked CROUSE under what circumstances he would kill someone? CROUSE stated that he would kill someone if they had hurt him or if someone had caught him doing something.

At this point of the interview, CROUSE stated that he thought he would be more comfortable talking with KENNICOTT, or Cpt FORBES.

I observed that CROUSE was becoming tearful, and he then requested to talk with me alone.

At CROUSE's request, Investigator McLAUGHLIN left the room. CROUSE told me that he wanted to tell me something, but he would feel more comfortable with someone he trusted like Cpt. FORBES from the Penitentiary was present. I advised him that I would make an attempt to get in touch with Cpt. FORBES and have him come to the interview room. CROUSE began to cry, and told me that he had wanted to tell his Parole Officer, Stan GROOM, all about what had happened, but that he had been unable to do so. He stated that he had started to tell Stan GROOM, but ended up telling him the story about the five Hispanics, and his subsequent foot chase of the one Hispanic who ran north from the Dome Building. I requested that Correction's Officer KING stay in the room with CROUSE, and I left the room and had someone contact the Oregon State Penitentiary to get Cpt. FORBES to come to the interview room.

After requesting the presence of Cpt FORBES, I returned to the interview room, and waited with CROUSE. I told CROUSE that I would be much more comfortable in requesting the presence of these persons if I knew exactly what was going on and what CROUSE wanted to talk about. At this time, CROUSE told me that he was the one who killed Michael FRANCKE, and that when FORBES arrived, he would lay out the whole story. A request for Cpt. FORBES to contact us at the Oregon State Police office came at about 10:30 a.m.

When Cpt. FORBES arrived, he stayed with CROUSE while I conferred with Sgt. Karl NELSON of the Oregon State Police.

CJ-OC-89-02
John CROUSE
April 4, 1989
Page Six

002317

When CROUSE addressed Cpt. FORBES upon his arrival, he told FORBES that he had specifically requested FORBES because he knew and trusted FORBES. CROUSE told FORBES he would be comfortable with Det. GLOVER (who was not available) who worked as an investigator within the institution. It was decided that Det. PECYNA would set in on the interview, and PECYNA was introduced to CROUSE in the interview room at 11:20 a.m. CROUSE then began telling FORBES, PECYNA, and I about the killing of FRANCKE.

CROUSE told us that he had killed Michael FRANCKE and that he had been hired to do so. He was promised \$300,000. CROUSE told us that he had been met by a male Hispanic in the area of his parole officer's office on January 12, and then had met with that same person again on January 17, 1989, the date of the murder. CROUSE told us that the Hispanic subject had alleged that his brother had been killed in the New Mexico Penitentiary riots, and had made statements that his brother had died because of FRANCKE. CROUSE stated that on January 17, 1989, he had been given \$1,500 up-front money by the male Hispanic, and that this male Hispanic had told him that FRANCKE's office was in the Dome Building. CROUSE stated that he then went to the area of the Dome Building, and surveilled FRANCKE's car until FRANCKE had exited the building, opened the car door, and was placing something into the car. CROUSE stated he then walked up to the car as if he were just passing by, and when he got close enough, he grabbed FRANCKE and stabbed him. CROUSE stated that he stabbed FRANCKE and that they struggled around to the back of the car. CROUSE stated that he, after stabbing FRANCKE, had started to run in a southeasterly direction, planning on going to Park Street and to the residence of Buster BURGESS, but then changed his mind and turned to run westbound from the scene. CROUSE stated that when he turned to run back toward the car, FRANCKE had come toward him. CROUSE states that he shoved FRANCKE back toward the back of the car, and then proceeded to run westbound from the scene.

CROUSE related the contact with the Hispanic subject who hired him in a rather disjointed manner, stating that he was approached by the Hispanic subject who asked him a few questions about how CROUSE felt about corrections, and how he was doing on parole. CROUSE alleged that the subject did not mention FRANCKE nor the murder of FRANCKE during the first contact on January 12, 1989. CROUSE stated that on January 12, the subject told him that he would be in contact with him later. The same male Hispanic subject contacted CROUSE at the phone booth at the intersection of Park and Center just after

002318

CJ-OC-89-02
John CROUSE
April 4, 1989
Page Seven

CROUSE had called his brother. CROUSE denied that there was any prearranged meeting. He alleged that this Hispanic person had just found him. CROUSE advised that the Hispanic subject had told him that he would be watching the news, reading the newspapers, and once he was sure that FRANCKE had been taken care of, he would meet CROUSE within the first two weeks of April and deliver to him the remainder of the \$300,000. CROUSE claimed that that is why he was at the Chumaree on April 2, 1989 when he was arrested for Parole Violation and Assault 4. CROUSE alleged that he was there to meet the Hispanic and receive payment.

CROUSE became quite emotional when he talked about stabbing FRANCKE, and did not go into detail. I asked CROUSE what he did with the knife, and he first told me that he had taken the knife he had used to stab Michael FRANCKE and had driven to the coast and had thrown it in the ocean. Later, CROUSE told me that the knife that he had used to stab Michael FRANCKE had been turned over to Detective Tom MASON and Detective Ed MOUERY of the Oregon State Police. CROUSE told me that he had consented to a search of his residence at 3360 Camellia, S., Salem, and that the detectives had taken two knives, and two coats for examination by the Oregon State Police Crime Lab. CROUSE advised that the knife was a fixed bladed hunting-type knife.

CROUSE told me that he was wearing a greenish-colored coat, Levis, and cowboy boots, at the time that he committed the crime. CROUSE told me that he was also wearing a flannel shirt. CROUSE told us that when he returned to the Monterey Apartments where he was living at the time the crime occurred, he discovered that there was blood on the sleeve of the flannel shirt he was wearing, and blood on his Levis. CROUSE gestured to a place on the left leg of his Levis. CROUSE advised that he had washed the Levis, and that he had burned the shirt along with a bunch of newspaper in the alley behind that Monterey Apartments.

I asked CROUSE what he had done with the \$1,500 that he had received from the Hispanic male, and CROUSE told me that he had spent it all on drugs. CROUSE told me the reason he was waiting in the parking lot of the Chumaree is that he did not have enough money to go inside to buy a drink.

CROUSE told me that he had committed other crimes in the Salem area since he had been paroled. He alleged to have stolen a pickup from the DeLon used car lot and a Volkswagen from another location. CROUSE told me that he had driven the

002319

CJ-OC-89-02
John CROUSE
April 4, 1989
Page Eight

Volkswagen for approximately ten days, and he had left it parked near the Monterey and it had been towed away.

At approximately 11:40 a.m., CROUSE consented to put his statement on tape, and a tape recorded statement was taken. When CROUSE explained the stabbing, he became very emotional. He cried heavily. He looked at me and said that he was sorry that it had happened. He then explained that he had not meant to kill FRANCKE and attempted to explain that he only wanted to let FRANCKE know that someone was after him. He was asked if he really thought that the person who hired him would have paid him if FRANCKE had not been killed. CROUSE then said that the Hispanic man named Juan had not specifically requested that FRANCKE be killed. CROUSE said all he was thinking about was the money, not what he was doing.

CROUSE told us that he had stabbed FRANCKE at least twice, maybe more. CROUSE gestured indicating a forward thrust of a knife with his left hand. (I had been watching CROUSE for some time, and had noted that when he took a pen to draw the direction of travel of the Hispanic man he allegedly chased in his original story, that he wrote with his right hand.) We asked CROUSE which hand he had the knife in, and he again said it was his left. He again gestured a forward thrusting motion.

We asked where FRANCKE was stabbed. CROUSE said "In the heart." We asked how many times and where else or if it was just once. CROUSE said that he stabbed at least twice and thought that he had cut FRANCKE's arm once, possibly when he was withdrawing the knife. CROUSE told us that he had difficulty talking about it and thought that he could write what happened easier than talking about it. At about 1:00 p.m., I requested hair samples from CROUSE, and he consented to give me samples of his head hair, mustache hair, and arm hair. A consent form was read to CROUSE by Detective PECYNA and the hair samples were taken. During the process of taking the hair samples, CROUSE told me that he had admitted the murder of Michael FRANCKE to his brother in Malcom, Nebraska. CROUSE advised that he thought that telephone call was made from the residence of Penny FOX. CROUSE advised that he lived at the Monterey Apartments until approximately January 31 when he moved in with Penny FOX at 3360 Camellia, S., Salem, Oregon. CROUSE told me that there was a phone bill in his girlfriend's car which should confirm the date that the call was made. CROUSE said since approximately February 17, he has been together with Cyndi HATHAWAY. He advised that Cyndi HATHAWAY had a rented storage unit in which she had stored some of her property when she left her husband, and that some of his things were also stored in that storage unit.

002320

CJ-OC-89-02
John CROUSE
April 4, 1989
Page Nine

At 1:57 p.m., CROUSE made a telephone call to Cyndi HATHAWAY and advised her that investigators would be coming to her residence to pick up some of the clothing items that he stated he was wearing at the time of the crime. Prior to leaving the Oregon State Police Office, CROUSE again admitted that he had lied to me about the knife at first, and assured me that the knife he gave to Detective MASON and Investigator MOUERY was in fact the knife that he had used to stab FRANCKE. CROUSE told me that he was feeling much better now that he had gotten the whole thing off his chest and had told me the truth. CROUSE again told me that he wanted to tell his Parole Officer, Stan GROOM, all about it but couldn't, and had told him a phoney story to explain his presence in the area when the crime occurred.

I asked CROUSE why he quit reporting to his parole officer after the contact with police during which he had consented to the taking of the knife. CROUSE told me that he had a bad feeling about it, and he felt that he would be arrested for the murder of Michael FRANCKE. CROUSE told me that he has confessed to every crime that he has committed, and told me that he had confessed to burglaries in Bend, Oregon after he had been arrested for robbery. CROUSE alleged that the burglaries he told the police about he was not even suspected of.

CROUSE explained to me that the knife that he had used to kill Michael FRANCKE was a knife that had been left at his apartment at the Monterey by a subject known as Whitney FISH, another ex-convict from OSCI, who was wanted.

When questioned about details in regard to the stabbing, CROUSE would say that he had blanked out after the first stab. He is sure that he held the knife in his left hand, and he thought that he may have stabbed FRANCKE at least twice. I asked CROUSE if he could recall anything that FRANCKE had said to him, and CROUSE stated that he believed that FRANCKE had asked, who are you, or what are you doing, and that FRANCKE may have moaned or cried out when he was stabbed.

Detective PECYNA, Correction's Officer KING, and I accompanied CROUSE from the Oregon State Police office to the residence of his girlfriend, Cyndi HATHAWAY, on Brown Road, where he turned over a pair of Levis, which he claimed he was wearing on the night that Michael FRANCKE was stabbed. After leaving the residence of Cyndi HATHAWAY, CROUSE was transported to the hospital in Salem where he consented to have blood drawn. When we returned to the Oregon State Police office,

*asked out but says
4 two wounds...*

*asked or heard no
yes*

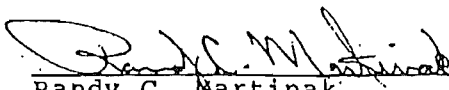
002321

CJ-OC-89-02
John CROUSE
April 4, 1989
Page Ten

Sgt. LAIRD of the Oregon State Police took a full set of fingerprints from CROUSE.

At approximately 4:05 p.m., while in the interview room at the Oregon State Police office, CROUSE changed his story in regards to the stabbing of Michael FRANCKE. CROUSE stated that he made contact with FRANCKE, and started a verbal confrontation in order to get up enough nerve to stab FRANCKE. CROUSE claimed that FRANCKE grabbed him, and that they wrestled around for a while before CROUSE stabbed FRANCKE. CROUSE stated that he struck FRANCKE at least once with his fist, and then when it appeared he was going to lose the fist fight with FRANCKE, he stabbed FRANCKE. CROUSE told me that the keys from the cars that he had stolen in Salem, were in a box at Penny FOX's residence. CROUSE stated that he would feel comfortable with writing out exactly what had happened during the stabbing of FRANCKE. CROUSE stated that he could put it all on paper, and then would give it to the investigators.

I asked CROUSE what the attitude of his brother would be, if contacted by police. CROUSE assured me that his brother would probably not say anything that would be detrimental to CROUSE unless CROUSE first called his brother and told him to tell the police the truth. CROUSE was released into the custody of Cpt. FORBES and Correction's Officer KING to be returned back to the Oregon State Penitentiary. CROUSE stated that he would make contact with investigators the next morning with his written notes.


Randy C. Martinak
Investigator

11f/4862C

E. R.-1236

April 16, 1989

002322

On April 13, Detective PECYNA and I were advised that John Lee CROUSE wished to speak with us and arrangements were made to transport John Lee CROUSE from the Oregon State Penitentiary to the Salem Patrol Office of the Oregon State Police. John Lee CROUSE was transported by Cpt. FORBES of the Corrections Division, and prior to any interview being conducted, CROUSE was advised of his constitutional rights from a Miranda card by Detective PECYNA, and CROUSE signed the card acknowledging that he understood his rights.

Detective PECYNA asked CROUSE what he wanted to talk to us about, and CROUSE stated that he has told us the truth in regards to the homicide of Michael FRANCKE. He states that he told us the truth on the tape that he gave us when we returned from our visit to the scene of the crime. CROUSE stated that we have asked him some details that he cannot explain. He states that he does not recall everything that happened during his scuffle with Michael FRANCKE. CROUSE told us that all he wanted to do was get away from Michael FRANCKE after Michael FRANCKE caught him breaking into the car. CROUSE states that he recalls stabbing at FRANCKE at least two or three times, and

E. R.-1237

slashing at FRANCKE to keep FRANCKE away from him. CROUSE

002323

002324

CJ-OC-89-02

John CROUSE

April 13, 1989

Page Two

stated that he is positive that he struck Michael FRANCKE in the left side of his face with a "round-house right" during his struggle. CROUSE told us that FRANCKE had caught him in the car, asked him what he was doing, and then told CROUSE something similar to, "Come with me, we're going to make a phone call." CROUSE said he immediately tried to talk his way out of the situation, but FRANCKE was not listening. FRANCKE had a hold of CROUSE and CROUSE attempted to shake free and run. FRANCKE hit him, striking CROUSE in the jaw. CROUSE said he then hit back with a round-house right, striking FRANCKE in the left side of the face. FRANCKE grabbed at him again, and he realized that FRANCKE was going to win any continued fist fight, so CROUSE pulled the knife. CROUSE had the knife in his left hand and kept his right hand free to hit FRANCKE. CROUSE said he made overhand stabs at FRANCKE; but FRANCKE kept coming at him, so he slashed at FRANCKE to keep FRANCKE away. CROUSE believes he stabbed FRANCKE in the arm, and at one time FRANCKE caused him to lose the knife. As he bent to grab the knife, FRANCKE hit him. He then attempted to stab FRANCKE in the

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center of the chest,, but FRANCKE deflected the blow with his right hand and CROUSE stabbed FRANCKE in the left side of the chest. CROUSE says he knew that the blow was a solid one as the wind went out of FRANCKE and FRANCKE said, "Oh God" or "Oh my God" and just stood there. CROUSE says he withdrew the knife, turned, and ran. CROUSE says he does not know what FRANCKE did after that, as he only stopped and looked back once, just to see if anyone was chasing him.

CROUSE stated that the wire that he used to break into Michael FRANCKE's car was wrapped around his hand and then shoved into his back pocket after entry into the car was gained. CROUSE states that he is sure that he put that wire in a box with some other knick knacks and items that he had at the residence of Penny FOX. CROUSE is sure that also in that box were the keys from the pickup that he stole from a used car lot, and the keys to a Volkswagon that he had also stolen. CROUSE states that the wire is light coat-hanger wire, dark in color and it has a coiled hook on the end of it, similar to the one he made for us.

CROUSE states that he is positive that he called his brother from the phone booth at Park and Center Street in Salem, prior to the stabbing of FRANCKE. CROUSE is sure that he did not have enough money to make that a paid call, and believes that the call was either a collect call to his brother

002325

E. R.-1240

or it was billed to another number. CROUSE states that there is a possibility that he may have billed that call to one of the telephone numbers at the Monterey Apartments. CROUSE

002320

002327

CJ-OC-89-02

John CROUSE

April 13, 1989

Page Three

states that he recalls that Debbie HOLLOPETER asked him about some telephone calls which were on the phone bills at the Monterey Apartments, and he denied making such calls, although he is aware that he did.

CROUSE told us that since his confession to police, he feels much better, and he just wants to get this whole thing over with and start doing his time. CROUSE states that he does not expect to get the death penalty, and that expects anything from a manslaughter conviction to life imprisonment. He states that he is aware that the case will probably be handled by the female district attorney from the Marion County District Attorney's Office, and he is aware that she wants to "move up," and is out to make a reputation. He states that in spite of that, he can plea bargain the murder of Michael FRANCKE to a manslaughter charge, and that he would be young enough at age 41 to start over if he had to do the total sentence.

CROUSE admits also that he was the wheel man in an armed

E. R.-1242

robbery of the Dairy Queen on Lancaster in Salem, Oregon.

CROUSE states that the crime was committed by a person known to him as GRUB, who at one time lived at the Monterey Apartments.

He thinks that the amount of money obtained was approximately \$285. CROUSE states that he waited in the pickup truck while GRUB committed the robbery, and then drove GRUB away from the

002328

002329

CJ-OC-89-02

John CROUSE

April 13, 1989

Page Four

scene. CROUSE states that he was driving a small white pickup truck belonging to Penny FOX at the time of the crime. CROUSE states that he observed two marked units of the Salem Police Department arriving at the Dairy Queen as he and GRUB left the scene.

At 3:00 p.m., a taped statement was taken from John Lee CROUSE. The tape was shut off at 3:13 p.m.

After the taped statement, I advised CROUSE that I was having trouble confirming the fact that he had made a telephone call on January 17, 1989 to his brother or anyone else in Lincoln, Nebraska. I told him that I had talked with his mother, and that I had phone tolls from her telephone, which indicated that she had made a telephone call on January 17, 1989 to a Salem number. I advised CROUSE that the number was the number of Edward YARNELL at 3260 Camellia, S., Salem, Oregon. CROUSE informed me that Ed YARNELL would have been contacted by his mother about a box of clothes that she had

E. R.-1244

mailed to him. CROUSE states that a couple of days after the
stabbing of Michael FRANCKE, he went to YARNELL's residence and
picked up the clothes.

Our contact with CROUSE was ended at 3:35 p.m.

Randy C. Martinak

Investigator

llf/4864C

002330



DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE DIVISION

REPORT OF INTERVIEW

CASE/FILE NO.: CJ-OC-89-02

PERSON INTERVIEWED: John Lee CROUSE; DOB: 6/14/57
Inmate at the Oregon State Penitentiary

OTHERS PRESENT: Detective Kenneth PECYNA, OSP

DATE/TIME/PLACE OF INTERVIEW: April 13, 1989; 2:09 p.m.
Oregon State Police Office, Salem

INVESTIGATOR: Randy C. MARTINAK

DATE DICTATED: April 16, 1989

On April 13, Detective PECYNA and I were advised that John Lee CROUSE wished to speak with us and arrangements were made to transport John Lee CROUSE from the Oregon State Penitentiary to the Salem Patrol Office of the Oregon State Police. John Lee CROUSE was transported by Cpt. FORBES of the Corrections Division, and prior to any interview being conducted, CROUSE was advised of his constitutional rights from a Miranda card by Detective PECYNA, and CROUSE signed the card acknowledging that he understood his rights.

Detective PECYNA asked CROUSE what he wanted to talk to us about, and CROUSE stated that he has told us the truth in regards to the homicide of Michael FRANCKE. He states that he told us the truth on the tape that he gave us when we returned from our visit to the scene of the crime. CROUSE stated that we have asked him some details that he cannot explain. He states that he does not recall everything that happened during his scuffle with Michael FRANCKE. CROUSE told us that all he wanted to do was get away from Michael FRANCKE after Michael FRANCKE caught him breaking into the car. CROUSE states that he recalls stabbing at FRANCKE at least two or three times, and slashing at FRANCKE to keep FRANCKE away from him. CROUSE

PAGE 1 OF ____

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CJ-OC-89-02
John CROUSE
April 13, 1989
Page Two

002338

stated that he is positive that he struck Michael FRANCKE in the left side of his face with a "round-house right" during his struggle. CROUSE told us that FRANCKE had caught him in the car, asked him what he was doing, and then told CROUSE something similar to, "Come with me, we're going to make a phone call." CROUSE said he immediately tried to talk his way out of the situation, but FRANCKE was not listening. FRANCKE had a hold of CROUSE and CROUSE attempted to shake free and run. FRANCKE hit him, striking CROUSE in the jaw. CROUSE said he then hit back with a round-house right, striking FRANCKE in the left side of the face. FRANCKE grabbed at him again, and he realized that FRANCKE was going to win any continued fist fight, so CROUSE pulled the knife. CROUSE had the knife in his left hand and kept his right hand free to hit FRANCKE. CROUSE said he made overhand stabs at FRANCKE; but FRANCKE kept coming at him, so he slashed at FRANCKE to keep FRANCKE away. CROUSE believes he stabbed FRANCKE in the arm, and at one time FRANCKE caused him to lose the knife. As he bent to grab the knife, FRANCKE hit him. He then attempted to stab FRANCKE in the center of the chest,, but FRANCKE deflected the blow with his right hand and CROUSE stabbed FRANCKE in the left side of the chest. CROUSE says he knew that the blow was a solid one as the wind went out of FRANCKE and FRANCKE said, "Oh God" or "Oh my God" and just stood there. CROUSE says he withdrew the knife, turned, and ran. CROUSE says he does not know what FRANCKE did after that, as he only stopped and looked back once, just to see if anyone was chasing him.

CROUSE stated that the wire that he used to break into Michael FRANCKE's car was wrapped around his hand and then shoved into his back pocket after entry into the car was gained. CROUSE states that he is sure that he put that wire in a box with some other knick knacks and items that he had at the residence of Penny FOX. CROUSE is sure that also in that box were the keys from the pickup that he stole from a used car lot, and the keys to a Volkswagon that he had also stolen. CROUSE states that the wire is light coat-hanger wire, dark in color and it has a coiled hook on the end of it, similar to the one he made for us.

CROUSE states that he is positive that he called his brother from the phone booth at Park and Center Street in Salem, prior to the stabbing of FRANCKE. CROUSE is sure that he did not have enough money to make that a paid call, and believes that the call was either a collect call to his brother or it was billed to another number. CROUSE states that there is a possibility that he may have billed that call to one of the telephone numbers at the Monterey Apartments. CROUSE

CJ-OC-89-02
John CROUSE
April 13, 1989
Page Three

002339

states that he recalls that Debbie HOLLOPETER asked him about some telephone calls which were on the phone bills at the Monterey Apartments, and he denied making such calls, although he is aware that he did.

CROUSE told us that since his confession to police, he feels much better, and he just wants to get this whole thing over with and start doing his time. CROUSE states that he does not expect to get the death penalty, and that expects anything from a manslaughter conviction to life imprisonment. He states that he is aware that the case will probably be handled by the female district attorney from the Marion County District Attorney's Office, and he is aware that she wants to "move up," and is out to make a reputation. He states that in spite of that, he can plea bargain the murder of Michael FRANCKE to a manslaughter charge, and that he would be young enough at age 41 to start over if he had to do the total sentence.

CROUSE admits also that he was the wheel man in an armed robbery of the Dairy Queen on Lancaster in Salem, Oregon. CROUSE states that the crime was committed by a person known to him as GRUB, who at one time lived at the Monterey Apartments. He thinks that the amount of money obtained was approximately \$285. CROUSE states that he waited in the pickup truck while GRUB committed the robbery, and then drove GRUB away from the

CJ-OC-89-02
John CROUSE
April 13, 1989
Page Four

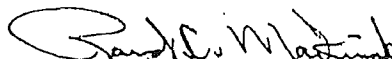
002348

scene. CROUSE states that he was driving a small white pickup truck belonging to Penny FOX at the time of the crime. CROUSE states that he observed two marked units of the Salem Police Department arriving at the Dairy Queen as he and GRUB left the scene.

At 3:00 p.m., a taped statement was taken from John Lee CROUSE. The tape was shut off at 3:13 p.m.

After the taped statement, I advised CROUSE that I was having trouble confirming the fact that he had made a telephone call on January 17, 1989 to his brother or anyone else in Lincoln, Nebraska. I told him that I had talked with his mother, and that I had phone tolls from her telephone, which indicated that she had made a telephone call on January 17, 1989 to a Salem number. I advised CROUSE that the number was the number of Edward YARNELL at 3260 Camellia, S., Salem, Oregon. CROUSE informed me that Ed YARNELL would have been contacted by his mother about a box of clothes that she had mailed to him. CROUSE states that a couple of days after the stabbing of Michael FRANCKE, he went to YARNELL's residence and picked up the clothes.

Our contact with CROUSE was ended at 3:35 p.m.


Randy C. Martinak
Investigator

11f/4864C

CASE NUM. #8900672		SPO Evidence Case #89-016		<h2 style="margin:0;">INFORMATION REPORT</h2> <h3 style="margin:0;">DEPARTMENT OF STATE POLICE</h3> <h3 style="margin:0;">SALEM, OREGON 97310</h3>		DISTRIBUTION <input checked="" type="checkbox"/> Gen. Hdq. <input type="checkbox"/> Arson <input type="checkbox"/> Document <input checked="" type="checkbox"/> Dist. Hdq. <input type="checkbox"/> Narcotic <input type="checkbox"/> Ident. <input type="checkbox"/> Crime Lab <input checked="" type="checkbox"/> Other <u>Marion County D.A.</u>	
AGENCY OREGON STATE POLICE - Salem							
1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution—Complainant <input type="checkbox"/> No Prosecution—Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER			
4. Original Report Date 01-18-89, Wednesday		5. Time 12:48 AM		6. Written By Kenneth P. Pecyna, Detective		7. This Report — Date 04-18-89	
				8. Time 2:30 PM		9. County Marion	
10. Victim or Complainant FRANCKE, JAMES MICHAEL				11. Residence Address 21058 Hazelnut Ridge Rd., Scotts Mills, OR		12. Res. Phone 	
				13. Sex M		14. Race W	
16. Subject of This Report ADDITIONAL INFORMATION				15. 10		17. Total Value of Recovered Prop. (Itemize Below)	

18. Details: (Use Additional Plain Sheets as Necessary)

REFER: To all reports bearing GHQ Case #8900672.

NARRATIVE: On 01-18-89 at 12:48 AM, security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

MENTIONED: CROUSE, JOHNNY LEE. DOB 06-14-57 (Previously identified) BURGESS, C.J. VELDON BUSTER (BUCK) DOB 04-02-48 (Previously identified)

ACTION TAKEN: On 04-11-89 at 11:10 AM, the writer and Detective Kenneth Pecyna contacted Johnny Crouse at the Salem patrol office. Crouse stated in substance that he did not kill Michael Francke. He told the detectives that he had killed Michael Francke because he was scared. Crouse related that he did witness the incident as he was walking west on Center Street at approximately between 6:30 and 7:00 PM. While walking down Center Street, he looked over and observed an individual running away from in front of the Dome Building towards the west. He did not get a good look at the person running and continued west on Center Street. He advised that he decided to put himself in the place of the person he saw running. Regarding his first statement in which he told investigators that he had chased a suspect towards the north of the Dome Building, he related that he advised he saw the suspect throw something down on the ground. That information came from Buck Burgess, who had told Crouse that he (Buck Burgess) saw a guy throw a knife down in that location. Crouse advised that on approximately the 21st of January, between 7:30 and 8:00 PM, he took Buck Burgess to an area near Claxter Road. Burgess advised that he was looking for a pocket book that he had seen earlier. Nancy Smith also accompanied Crouse and Burgess. They were at this area for approximately fifteen minutes while Burgess had a flashlight and walked back along a fence row and along the street. Crouse advised that he was driving Penny Fox's small white pickup.

CASE STATUS: Investigation continuing

LTG:ct

04-18-89

Reporting Officer(s)

Loren T. Glover, Detective

Off. I.D. Number.

102-21

002341

LANCASTER COUNTY SHERIFF'S DEPARTMENT
SUPPLEMENTARY REPORT

CASE NUMBER: 89002026 A
DATE: 04/05/89
DEPUTY: Hopper 90244 and Sgt Keller 90218
TYPE OF INCIDENT: OPS - Homicide
VICTIM/COMPLAINANT:
Party Interviewed: Crouse, Larry D. w/m, dob 02/27/60
12909 NW 84, Malcolm, NB 796-2537

90244
002342

OTHER PERSONS INVOLVED: Randy Martinak
Oregon, Dept. of Justice
503-378-6347
Beeper Number 503-341-0559

Det. Pecyna
Oregon State Police
503-378-2575

Oregon Suspect: Crouse, Johnny Lee w/m, age 32
Currently incarcerated in Oregon Penal System

SYNOPSIS: This report pertains to the Oregon Department of Justice, asking our office for assistance in a homicide case. The victim, in the homicide, was the Director of the Department of Corrections in Oregon. The suspect, Johnny Crouse, admitted to the Oregon investigators, that he committed the homicide. He also stated, he contacted his brother after the homicide and telling his brother what he had done.

The Oregon authorities wanted contact to be made with the brother, a Larry Crouse. Contact was made with Mr. Crouse, although, Mr. Crouse indicated that he knew his brother wanted to kill someone, but did not actually tell him about the actual murder.

For additional information please note Mr. Crouse's formal statement.

BODY OF REPORT: On April 4, 1989, at approximately 2200 hrs., I was advised by Sgt. Keller there was an investigator with the Oregon Department of Justice currently holding the telephone line, regarding a homicide case that they were working in Oregon. Sgt. Keller went on

TYPIST: mb DEPUTY: Hopper 90244 CASE: 89002026 A PAGE: 1

to state, a suspect in the homicide had been apprehended and during a interview with the suspect, he admitted to telling his brother about the homicide. Sgt. Keller also learned that the suspect's brother was a Larry Crouse living in the Malcolm area.

I did get on the telephone with Randy Martinak with the Oregon Department of Justice. Mr. Martinak stated on January 17, 1989, while the Director of the Oregon Correctional Facilities, a Michael Frankie (sp?), was walking to his car in a parking lot, he was stabbed to death in the parking lot. Mr. Martinak continued, the suspect in the homicide is a Johnny Lee Crouse, who had just admitted to the murder, along with indicating that he had called his brother, telling his brother about the homicide.

Mr. Martinak requested our office to contact the brother, Larry Crouse, in an attempt to corroborate the statement obtained from Johnny Crouse. Also, Mr. Martinak asked if we could obtain the phone bill indicating the call that Johnny made to Larry.

During my conversation with Mr. Martinak, Sgt. Keller did obtain the address of Larry Crouse, being 12909 NW 84th.

At approximately 2239 hrs., same date, Sgt. Keller and I did meet with Larry Crouse at the above location. Mr. Crouse met us in the driveway area of his residence and was interviewed in the backseat of Sgt. Keller's cruiser.

Sgt. Keller and I advised Mr. Crouse that he was not in any trouble, although, we needed to know if he had any contact with his brother Johnny. Mr. Crouse indicated that he did have contact with him approximately two weeks ago. Mr. Crouse also advised that when Johnny's calls, he calls collect and usually calls at least one to five times a week. Sgt. Keller and I obtained personal information regarding family members of the Crouses. Larry indicated his mother's name is Martha and he has a brother named Richard. Also, he has three sisters, Karen Pavey, Elizabeth Crouse and a Beth Darnill.

I then asked Mr. Crouse if he could obtain his phone bills from the residence. Mr. Crouse did go in to the residence, although, he returning, indicated to us that his mother currently had the phone bills, due to the preparation of his taxes.

Mr. Crouse again, got in to the back lot area of Sgt. Keller's cruiser. We again questioned Mr. Crouse about telephone conversations he had with his brother. I then advised Mr. Crouse that his brother had been arrested in Oregon regarding a homicide. Mr. Crouse began to cry and became emotionally upset. I asked Mr. Crouse if his brother had mentioned anything about killing anybody. Mr. Crouse indicated his brother had told him he wanted to kill someone. Although the brother did not indicate who or if the murder actually occurred.

I then asked Mr. Crouse if he could have received a phone call in January, he indicated, yes. Sgt. Keller and I then indicated that we would take Mr. Crouse to the Sheriff's Office where we would recontact the investigators in Oregon pertaining to the specifics of the case.

At approximately 2317 hrs., we did arrive at the Sheriff's Office and I did contact Mr. Martinak regarding further information. Mr. Martinak indicated the suspect did telephone the brother, from a gas station, immediately after the homicide.

I then interviewed Mr. Crouse regarding Mr. Martinak's information. Mr. Crouse still stated that he knew that his brother wanted to kill someone, although, did not know who and if actually he really did. He went on to state that since his brother had been paroled, his brother was fed up with the pressure, along with the harassment from what I am assuming as being the Parole Administration in Oregon. Mr. Crouse continued that his brother had indicated to him that he did not feel that he was out of the penitentiary.

I asked Mr. Crouse if he would like to speak to his brother, he indicated yes. I recontacted Mr. Martinak and advised him that the brother would speak to the suspect. Mr. Martinak indicated they would be re-interviewing the suspect in the morning hours of April 5, 1989 and when the brother came to the Sheriff's Office, I could call them and we could arrange the two brothers to talk to each other.

I then asked Mr. Crouse if he could be at the Sheriff's Office at noon, he indicated he could be at the office between 12:30 and 1 o'clock. I advised him that would be okay and he agreed to return.

After arranging the telephone call, I took a formal statement from Mr. Crouse; after the statement, Sgt. Keller returned Mr. Crouse to his residence.

E. R.-1253

For additional information note the formal statement.
End of tape.

002345

TYPIST: mb DEPUTY: Hopper 90244 CASE: 89002026 A .PAGE: 4

89002026 04.05/89 Approx. 0045
Deputy Hopper 5 14
1

This is Investigator Hopper taking a formal statement from Larry Crouse at the Sheriff's Office on 05 April 1989 at approximately 0845 hrs. This statement will be regarding an outside police service for the State of Oregon regarding a homicide investigation. Larry could I get your full name?

A. Larry D. Crouse, Sr.

Q. Larry, could I get you to spell your last name?

A. Crouse

Q. Okay. Could I get your date of birth?

A. 02/27/60

Q. Okay. Ah, where do you live at Larry?

A. Ah, 12909 NW 84th.

Q. Okay, ah, can I get your home phone number?

A. 796-2537.

Q. Okay, ah, could you tell me who John Johnny Crouse is?

A. My brother.

Q. Okay, where does your brother live at?

A. He ah lived in Oregon State Penitentiary for 8 years, as far as I know when he got out he was living in Salem, Oregon.

Q. Okay, ah, have you had contact with Larry recently?

A. You mean John?

Q. Er, yes, have you had contact with John lately?

A. Been a couple of weeks.

Q. Okay. Um, when you talked to John a couple of weeks ago, what did he say?

A. Well he called me cause he had his son with him, so I got to talk to his son, ya know, and that's been ya know the first time I talked to his son since he was born, ya know, and that's why he called me cause he had his boy with him and he's in such a good mood and that's the last time I talked to him.

Q. Un huh (meaning yes)

A. I got to talk to my own nephew for the first time, so that's the reason why he called me, so my own nephew could say hi to me and I could say hi to him and then the two boys could talk to each other.

Q. Ah.

A. and that's the reason why he called.

Q. Okay. Okay. and he was living with his girlfriend at that time?

A. Yeah, he was living with a lady at this time.

Q. Okay. Um, how many times in a week did John usually call you?

A. Anywhere from one to five times a week.

Q. 1-5?

A. Yeah.

Q. Okay.

A. It it just varied how he felt, ya know, sometimes he just felt like calling me every day just to see how I felt, just ya know

Q. un huh (meaning yes)

A. know what was going on with me and tell me what was going on with him as far as I knew everything was going good.

Q. Un huh (meaning yes)

A. Had a job working in a trailer park and ya know and a management job

Q. uh huh (meaning yes)

A. so

Q. Ah, did Johnny ever call you up and ah and sound like that ah he was under alot of stress?

A. A few times yes.

Q. Did he ever make mention as who was causing the stress?

A. He never mentioned no names.

Q. Okay. Did he

A. Never just (inaudible) just that he got hassled of every day that he was out.

Q. And who was hassling him?

Formal Statement from E.R. 1256
89002026 05/89 Approx. 0045
Deputy Hopper 44

3

A. Naw, he never would say.

Q. Okay.

A. As far as I thought it was the cops.

Q. Uh huh (meaning yes)

A. ya know but he never come out and as far as say names he never would

Q. Uh huh (meaning yes)

A. no never told me no man's name or nothing that was hassling him

Q. Uh huh (meaning yes) Did he ever did he ever say anything that he was going to do something to somebody?

A. He mentioned that he was going to (inaudible) kill somebody but like I said it was something that went in one ear and went out the other, I thought he was talking bogus out of the top of his head ya know?

Q. Uh huh (meaning yes)

A. for being a little angry

Q. Uh huh (meaning yes)

A. but I never thought nothing like it ever come down, no. Never mentioned no details or nothing it just in the conversation that he just wanted to do it.

Q. Okay. Do you remember when this phone call was that you had where he mentioned this?

A. (inaudible mumbling) it would have been in March.

Q. In March?

A. Uh huh (meaning yes). On the first part of March.

Q. Okay.. Ah, can you remember exactly what was said during the telephone conversation?

A. That he was just fed up with the hassles and ya know being up there and not being able to walk the street a free man like he was suppose to be ya know, but just frustrations all I thought it was it was ya know gotta get a little frustration out so he called me and talked to me.

Q. Uh huh (meaning yes)

A. but, (inaudible) thing I could come down.

002348

89002026 /05/89 Approx. 0045
Deputy Hopper 244

4

Q. Uh huh (meaning yes) Did he hear of well let me re-phrase this
did ah did he ever ever say who he was mad at

A. Never

Q. Okay

A. Never did

Q. and he didn't feel like he was free

A. right

Q. so you think he he thought he was still in the penitentiary?

A. He said he felt like he was even though he was walking the
streets

Q. Uh huh (meaning yes)

A. like I said you got to understand though where he was in the
penal complex to understand the way they run their things up there

Q. Uh huh (meaning yes)

A. Like I said a man that ^{robs} harms a man gets 30 years, a man kills a
man they get 8 years

Q. Uh huh (meaning yes)

A. that's strange

Q. Uh huh (meaning yes)

A. ya know

Q. hum

A. I can see 'em giving a man that got out of the pen have to take
urine test once a day but not three times a day

Q. Uh huh (meaning yes)

A. ya know, or come and wake him up in the middle of the night and
take him down town

Q. Uh huh (meaning yes)

A. ya know, that's what he told me, so as far as I understood it, i'
was just the police harassment

Q. Uh huh (meaning yes)

A. Ya know.

002349

Q. Hum, but he never mentioned who?

A. No never ever mentioned who, in all the phone calls he never did mention no names

Q. Okay. Ah, what was he in the penitentiary for?

A. Armed robbery.

Q. and how many years did he have to serve there?

A. He had a 30 year sentence

Q. Un huh

A. and he served 8.

Q. Had he been incarcerated anywhere else?

A. In the ah Lincoln ah deal, what that reformatory, the old Lincoln reformatory.

Q. And what was that for?

A. Ah, 17 counts of breaking and entering and ah auto theft.

Q. Out of Lincoln?

A. Yeah.

Q. Ah, when he was in the Oregon Penitentiary, did he have alot of problems, did he ever mention any problems with

A. He never mentioned problems with any of ah well maybe with the guards ya know, he said the guards there was some guards there that give him a hassles but, that would be it.

Q. Uh huh (meaning yes)

A. ya know he never mentioned anybody giving him a hard time in there except for maybe a guard or two ya know

Q. Uh huh (meaning yes) Anything ever happen to him while he was inside?

A. Besides being thrown in the hole all the time, I don't know ya know.

Q. What was he usually thrown in the hole?

A. Ah the people would aggravate him a had a jail cell would be closed and then when they opened it up and then they would stand there an aggravate him while the guard was there and then the guard wouldn't

002350

Deputy Hopper 44

6

do nothing to the other guy and John would end up swinging ya know and then John would be the one taken down.

Q. Uh huh (meaning yes)

A. and ah the way he explained to me a couple of times

Q. Did he ever have any problems with any of the inmates?

A. No he's had a couple of one inmate that was a friend of his called me a couple of times ya know for John and while he was in the hole ya know

Q. Uh huh (meaning yes)

A. to let me know that John was in the hole that's the reason why he ain't called me but as far as I know he had some well if you can call 'em friends ya know

Q. Un huh (meaning yes)

A. but ah, he had some people in there he did like he associated with

Q. Uh huh (meaning yes)

A. like I said when you see a penitentiary like that then you can understand a man can't go without a day without having a little hell

Q. Un huh (meaning yes)

A. ya know, with that many inmates

Q. Uh huh (meaning yes)

A. ya know.

Q. Was he ever ah was he ever victimized while he was

A. Not in the Oregon, he got sexually molested here in Lincoln Regional in the ah reformatory, that was 10 years ago something like that, there was an article in the paper over it, 8 niggers sexually molested him in the shower when a guard turned his back

Q. But nothing happened in Oregon like that?

A. Nope nothing in Oregon like that that I know of no. I went out to see him ya know the guards they they really talked highly of him ya know, the lady guards really like him ya know

Q. Un huh (meaning yes)

A. that's what I couldn't understand, cause they did they talked like they really liked John

002351

E.R.-1260

Deputy Hopper 00244

7

Q. Uh huh

A. Ya know.

Q. So really, he didn't have any problems when he was in the penitentiary

A. Uh huh

Q. The problems occurred after he got out

A. More or less. Cause he never, when he called me the only like he said he got put in the hole but that's because of fighting

Q. Uh huh

A. ya know and out of being up there he was in 56 violent fights

Q. uh huh

A. caused by other people

Q. uh huh

A. (inaudible) ever mis-lead, somebody push him the wrong way yeah he was going to go for it

Q. uh huh, hum

A. but ya, I know that he told me that he had that many fights up there, and ya I can understand that, I would have to too.

Q. uh huh

A. ya know, ain't going to be pushed except so far

Q. uh huh

A. specially being behind bars somebody making fun of ya ya know when they are behind there too and you can't do nothing to 'em

Q. uh huh

A. ya know, and then when you do something to 'em then you're the one that gets thrown in the hole and he he gets away with it ya know

Q. uh huh, okay, going back to the telephone call you had, ya know, how how how did the phone call start out?

A. well, it started out like he'd like he'd went out and robbed someplace I guess cause he sounded like he was ya know a little nervous but, and then we started talking and he calmed down a little bit and he just came out and said he ya know brother I feel like killing somebody

002352

E. R.-1261

89002026 05/89 Approx. 0045

Deputy Hopper 9-44

8

Q. um hum, what did you think, what did he say to make to make you think he ah robbed somebody?

A. Ah the way he was ya know breathing and stuff ya know cause I know ya know through all his phone calls and stuff you can tell when he's nervous and when he wasn't ya know

Q. uh huh

A. this one just sounded like he was on one of nervous nights

Q. uh huh, and what did he say again?

A. that he just felt like killing somebody.

Q. uh huh.

A. Somebody out there done him wrong and he just wants to

Q. uh huh

A. see rights is done to him

Q. What did he do to him wrong?

A. He never said.

Q. And what did you tell him?

A. I'd ask him well why would you want to do something like that, but ya know, I kept asking him why, but I never got the full answer why, ya know he never would come out and tell me why.

Q. uh huh

A. ya know, just anger as far as I can understand

Q. uh huh, and when was the next time he called ya?

A. Well he called me many times after that.

Q. Okay, did he call ya, you said

A. that's the only phone call he ever called me or mentioned anything about it

Q. uh huh

A. just the one phone call.

Q. and then you said that he called back in the same day

A. later on in that evening, uh huh.

89002026 /05/89 Approx. 0045

Deputy Hopper 244

9

Q. and what did he say then?

A. well just like nothing ever happened, ya know, like it all happy and didn't (inaudible) himself like that ya know, so, well that talk helped me out alot he said well I got me a lay and I feel a lot better and stuff and and I'm glad I called ya and talked to ya

Q. uh huh

A. ya know and that was the end of that conversation, and I says well it's getting late ya know it was two hours difference back there than it is here and

Q. uh huh

A. and it was late in the morning and I said well I got to go to bed cause the boys got to get up and stuff and that was the end of that conversation

Q. Okay. Ah, about what time of day was it when he called you the first time?

A. Oh it was late, it was midnight when he called me the first time our time, his time was probably 10 o'clock.

Q. Okay.

A. The second time from midnight his time, 3 o'clock our time, 2 or 3.

Q. Uh huh

A. ya know, cause it was morning hours.

Q. okay.

A. well I was just getting ready to go to bed when he called the first time

Q. uh huh, Can you think of anything else that you think maybe we ought to know about er

A. No

Q. Okay.

A. I, ya know, I talked to tomorrow and see what he has to say

Q. Okay

A. and have a phone (inaudible) get it straight from the horse's mouth I guess, he's never lied to me as far as I know

Q. Uh huh

E. R.-1263

89002026 0 5/89 Approx. 0045
Deputy Hopper 9 14
10

A. and I'm going to ask him if he did it or if he didn't and if
didn't I hope to God he tells who did, ya know, you don't take
another's mans wrap

Q. uh huh

A. I don't want to see him do that if he didn't do it

Q. uh huh

A. ya know

Q. okay. This is Deputy Hopper concluding the statement at
approximately 0101 hrs.

End of tape. Statement typed by M. Busch. 04/05/89.

002355

MEMORANDUM TO THE FILE

TO: CJ-OC-89-02

DATE: April 17, 1989

FROM: Randy C. Martinak
Investigator

SUBJECT: Contacts with Lancaster County Sheriff's Office in
Lincoln, Nebraska, and Contact with Larry D. CROUSE,
the Brother of John CROUSE

At 8:00 p.m. on April 4, 1989, I made telephone contact with the Lancaster County Sheriff's Office in Lincoln, Nebraska, and spoke with Sgt. KELLER. I advised him that I interviewed John Lee CROUSE, who had admitted the stabbing death of Michael FRANCKE. I further advised Sgt. KELLER that John CROUSE had told me that at a time after the crime, John CROUSE had called his brother, Larry D. CROUSE, who lives in Malcolm, Nebraska, and told Larry CROUSE that he had committed the murder. I requested that a member of the Lancaster County Sheriff's Office make contact with Larry D. CROUSE in an attempt to get a statement from Larry CROUSE about his conversations with his brother. Sgt. KELLER advised me that Investigator Jerry HOPPER would attempt to contact Larry D. CROUSE. Sgt. KELLER advised me that Larry D. CROUSE lived at 12909 N.W. 84th, Malcolm, Nebraska.

At 9:45 p.m., I was contacted by phone by Detective Jerry HOPPER of the Lancaster County Sheriff's Office, who told me that he had made contact with Larry D. CROUSE. HOPPER advised me that when he made contact with Larry CROUSE and informed him he was there to talk to Larry CROUSE about a homicide which had been committed by his brother, Larry D. CROUSE started to cry. Larry CROUSE admitted that he had been contacted in January by his brother, John CROUSE, who had mentioned a murder. HOPPER stated that later in the interview with Larry CROUSE, that CROUSE had changed the time of the telephone contact with John CROUSE to the third or fourth week in February.

I had requested that Detective HOPPER attempt to obtain the telephone bill of Larry D. CROUSE in order to confirm the contact or the telephone calls between John and Larry CROUSE. HOPPER informed me that Larry D. CROUSE said his phone bill was in the possession of his mother, who was preparing his tax return.

HOPPER told me that Larry CROUSE was of the impression that his brother, John CROUSE, was fed up with all the pressure of being on parole, that John CROUSE did not feel that he was

002356

002357

Memorandum To The File
CJ-OC-89-02
April 17, 1989
Page Two

out of the penitentiary and a free person yet. Larry CROUSE said that John CROUSE had told Larry CROUSE that he was thinking about killing a person. Larry CROUSE told Detective HOPPER that it was his impression that John CROUSE was thinking about killing a parole officer or police officer.

On April 8, 1989, I flew to Lincoln, Nebraska and made contact with Detective HOPPER. On April 9, 1989, after numerous attempts at locating Larry D. CROUSE at his residence, I made contact with the mother of John CROUSE at her residence. When I arrived at the residence of Martha CROUSE at 1909 "O" Street, #3, I found that two of the sisters of John ROUSE and Larry D. CROUSE were also present at the apartment.

Martha CROUSE stated that she and her daughters had not heard from John CROUSE for approximately thirty days, and they were quite worried as he had not called. She advised that John Lee CROUSE called her frequently, sometimes twice in one day. She states that she and the rest of her family accepted collect telephone calls from John CROUSE as they were aware he had no family in Oregon and they thought it would help if they would accept the phone calls. Martha CROUSE checked the phone bill and advised that the last phone call that she had received from her son was on March 3, at 5:03 p.m. She told me that the telephone call came from telephone number 378-9239 in Oregon. The phone bill also reflects two telephone calls on March 2, 1989; one at 5:53 p.m., and one at 8:31 p.m. Those calls came from Oregon telephone number 371-8024. (See Interview Reports regarding statements of family.)

On April 10, 1989 at 11:45 a.m. Detective HOPPER and I made contact with Frank DelGADO in the records section of the Nebraska State Penitentiary, and received from him a copy of the file on John Lee CROUSE.

On 12:27 p.m., Detective HOPPER and I made contact with Detective Sgt. Joe SPLICHAL, of the Lancaster County Sheriff's Office and made arrangements to obtain the telephone bills for the telephone number of Larry D. CROUSE and Martha I. CROUSE. A court order was obtained, and the telephone tolls were received at 3:50 p.m.

On April 10, 1989, at 2:43 p.m., I also made telephone contact with Martha CROUSE and advised her that I did not feel that her son, Larry D. CROUSE, was being entirely honest with me about the telephone call which he had received from John Lee CROUSE. Martha CROUSE told me that she would talk with her son, and have him get in touch with me. At 5:41 p.m., I was contacted by telephone by Larry D. CROUSE. (See transcript of

E. R.-1266

Memorandum To The File
CJ-OC-89-02
April 17, 1989
Page Three

002358

tape recorded statement by Larry D. CROUSE.) At 6:15 p.m., Larry D. CROUSE brought some photos to the Sheriff's Office for me to deliver to his brother John Lee CROUSE at the Oregon State Penitentiary.

Attached to this memo are all reports by Detective HOPPER of the Lancaster County Sheriff's Office, a transcript of the tape recorded statement taken from Larry D. CROUSE by Detective HOPPER, copy of the Nebraska State Penitentiary file on John Lee CROUSE, a copy of the court order regarding the phone tolls on the telephone numbers of Martha I. CROUSE and Larry D. CROUSE, a copy of the telephone tolls, and a transcript of a telephone conversation between Larry CROUSE and I on April 10, 1989 at 5:41 p.m.

Randy C. Martinak
Investigator

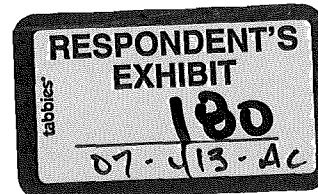
11f/4851C

E. R.-1267

GABLE ALIBI 1/17/90

Time	Event	Witness
6-6:30 PM	At Shelly Thomas house	Shelly Thomas
	buying 1/4 lb from	Vickie Boyd "Cricket"
	Mark Gessner for	J. Kevin Walker-telx2
	Robert Cornett	Jeanine-telx1
6:30-7:00PM	Showed up	Chris Warilla
7:30PM	FG left	??Mickey ^{Gess} Gause w/FG??
7:30-8:00PM	FG home	Chris Warilla
		Robert Cornett-called
		Jeanine home
		Scott and Anise
8:30-9:00PM	Met RC at arcade on	??Mickey Gause w/FG??
	corner Silverton and	Lamont w/RC
	Hawthorne.	Chris Warilla
	Back to FG house-in BR	??sat in chair??
	w/RC	Jeanine
		Robert Cornett
		??Lamont??
		Chris Warilla
20-30 min.	<u>Mark Gessner and Kevin</u>	Mark Gessner
	<u>Walker arrived, 1st time</u>	J. Kevin Walker
	<u>FG met MG. Scott upx2</u>	Jeanine
		Scott.
		Chris Warilla
		Mickey ^{Gess} Gause

Mark and Kevin leave



77 Ex 9

T.M.I. Investigations

P.O. Box 2241 Salem, Oregon 97308 Phone Salem 503/581-4846

Gable Alibi

Page two

Time	Event	Witness
	<u>Heard shattering glass</u>	Jeanine
		Scott
		Anise
		Apt Mgr
		Robert Cornett
		??Lamont??
		Chris Warilla
		Mickey ^{Goss} Gause
	FG to Scott apt, tells	Scott
	to be quiet.	Anise
		Jeanine
		Robert Cornett
		??Lamont??
		Chris Warilla
		Mickey Gause
10:30	^{Goss} FG took Mickey Gause back	Mickey Gause
	to 1/2way house-21st and	Rick-wkd thereFG sold
	State-check in	Rx to
	<u>?? Might have stayed night</u>	
	<u>w/FG</u>	
1/18/89	<u>FG drove Jeanine to wk</u>	Jeanine
	<u>saw yellow tape</u>	^{Goss} ??Mickey Gause??

Correct spelling

Goss

T.M.I. Investigations

P.O. Box 2241 Salem, Oregon 97308 Phone Salem 503/581-4846

Gable Alibi

Page three

Time	Event	Witness
??	FG got 72 hr notice	Apt Mgr
		Scott
		Anise
		Jeanine
		??Mickey ^{Goss} Gause??

10:00AM FG first heard MF name-radio

??Ed Gallagher??

Alibi-To Do

Interviews- Shelly Thomas
Vickie Boyd
J. Kevin Walker
Chris Warilla
Jeanine
Robert Cornett
Scott and Anise-Alaska
Mickey ^{Goss} Gause
Lamont
Apt Mgr
Rick-1/2way house

Records-Telephone-J. Kevin Walker call from ST house

ST records

FG records

J. Kevin Walker records

T.M.I. Investigations

P.O. Box 2241 Salem, Oregon 97308 Phone Salem 503/581-4846

E. R.-1271

10-27-84

- Smiths baby sitter - Frank
of Janet Newton Lewis
off Ramsey-

Print Cash

- Janayne stated that
Jessica would follow
direction. During January
she was to get off school
Bus and go directly to
home - If Frank wasn't home
she was to go to Murrane
Home - If Murrane not
home go to landlord - landlord
would call Janayne.

01895

- Jessica would stay with
Grandmother about every other
weekend.
- Janayne & Jessica at Janayne
mother's home on Jan 1, 7 & 9.
- Jessica at home with her on
Jan 14 - 15 - 16 -
Frank not home
Julie Wriggles possibly there
- Dropped Jessica off at Grandmother
on Jan 6th & picked her up on
Jan 8th - Janayne, Frank & Bunk
dropped Jessica off - listened to
music for about 1/2 hr - 45 minutes.

E.R-1272

10-27-89

- Gary Zackarias would buy groceries for her at times.
Jennyne thinks that Zackarias stopped by on Sunday Jan 15, 1989 and went to store for her. Bought Chicken Soup, crackers & milk.

- Jennyne stated that she didn't go looking for Frank. What could she even do if she ~~found~~ found him.

018958

- On 1-17-89 Frank, much concerned Jesus pulled her up from work at about 12:20 pm. They were late - It would take approx 10 minutes to get home - 7 minutes in morning to get to work.
Thinks they went straight home.

- Mike Semms met Frank before in Corrections Program - He knew Semms from there.

- ON 1-17-89 - She left work early - Got mad at ~~Mike Semms~~ Frank that day. Told him that if she was too sick to work that she was too sick.

E. R.-1273

1027-89
to baby's mother

- Janyne stated that
she thinks something
happened on that day
that she should be able
to remember but can't.

- Janyne stated something
about Semin running off
a of company type safe.

- Bank may have called
Semin regarding for
him to come up to buy
some ~~post~~ ^{post} ~~post~~ ^{post}

U18959

- Janyne stated that
she was a prescription
medicine - had card to
get prescription - forgot
prescription up at home.

- On 1-17-89 Credit card
did NOT mail by her.

- Janyne still states
she was home evening of
1-17-89 - stated that Semin
possibly could have been there
unknown thought. Jessica
would have been there.

- Janyne
~~Janyne~~ stated if phone rang
she would answer it.

E. R.-1274

10-27-81

- Janney stated that
they - Frank Hemin shot
someone out garden - that
day had a lot of traffic
from community and young
It seemed to remember Kamm
walked that day during
a group of silver grey Bunkers
Kamm worked in a Print Shop -
PIP Printing - Kamm had
PIT Bull in back of vehicle

- Reginald Lori Kessel -
Kissed her since grade school -
Didn't see her during this
time period until April 89
at Jerry + Delores Paul's house

018960

- Janney stated people
that would sell drugs for her -
- Russell Eustice
- Gary Zacharias
- Gerald, Mark and Rene -
- Sons would go to Scott + Brian - people
who have daughters

- Janney stated that
Gossamer moved her off for 500⁰⁰
He was supposed to deliver 1/2 ounce
of crack.
Became Frank Pappas
off for 500⁰⁰

UPT SCREEN AVAIL FOR 5735813812

0:

3 531 3312 707 75B FEB 07 89 *BILL# CA94 P20001
MYNE VIERRA SAL L21 TAX FSLG E: 233 SD
503-531-3312 707 75
BILLING AND SERVICE DATE OF BILL FEB 07, 1989
QUESTIONS -- CALL
1 800 222-4300 -- NO CHARGE

ATST DETAIL OF CURRENT CHARGES

LONG DISTANCE

	DATE	TIME	CLA	TO	FROM	NUMBER	MIN		NET CHARGE
1	109	523P	37	TO	OLYMPIA	3A 205 754 7246	23	DISCOUNTED	3.46
2	117	233P	A1	TO	ALBANY	OR 325 6562	1		.34
3	113	300A	A7	TO	INDEPNDCMO	316 257 1691	1		.30
4	118	912A	A7	TO	INDEPNDCMO	316 257 1691	7		1.86
5	113	330A	A1	TO	COOS BAY	OR 259 5933	1		.37
6	118	931A	A1	TO	NORTH BRVDOR	756 2595	7		2.35
7	113	913A	A1	TO	ALBANY	OR 325 3728	1		.34

NOTF

----- TYPE ----- FLJP ----- PW ----- ACT ----- BD ----- USR ----- P

0008217

SP89006 AGENCY OREGON STATE POLICE - SALEM		DEPARTMENT OF STATE POLICE SALEM, OREGON 97310		<input checked="" type="checkbox"/> Dist. Hdq. <input type="checkbox"/> Narcotic <input type="checkbox"/> Ident. <input type="checkbox"/> Crime Lab <input checked="" type="checkbox"/> Other Marion County D.A.			
1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution—Complainant <input type="checkbox"/> No Prosecution—Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER			
4. Original Report Date 01-18-89, Wednesday	5. Time 12:48AM	6. Written By Kenneth P. Pecyna, Detective	7. This Report — Date 02-15-90	8. Time 11:30 AM	9. County Marion		
10. Victim or Complainant FRANCKE, JAMES MICHAEL		11. Residence Address 21058 Hazelnut Ridge Road Scotts Mills, OR 97375		12. Res. Phone --	13. Sex M	14. Race W	15. D.O.B. 10-02-46
16. Subject of This Report FOLLOW-UP INVESTIGATION				17. Total Value of Recovered Prop. (Itemize Below)			
9. Details: (Use Additional Plain Sheets as Necessary)							

REFER TO: All reports bearing General Headquarters Case #SP8900672.

MENTIONED FOR
DATA ENTRY:GAMET, GORDON VIRGIL
DOB/07-25-59
1160 16th Street, NW
Corvallis, Oregon
Work Telephone: 926-3728MENTIONED OTHERS: ~~WALKER, JOHN KEVIN~~
(Previously Identified)STUDER, RANDY
(Previously Identified)FARM, PAUL
(Previously Identified)GOSS, MICKEY
(Previously Identified)

NARRATIVE:

On January 18, 1989, at 12:48 a.m., security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections' Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

Reporting Officer(s) William J. Pierce, Detective		Off. I.D. Number 688-14		APB Numbers and Dates		Approved JPL		Date 2/21/90		
Other Agencies Notified		Date	Time	Method						

0000

026832

INFORMATION REPORT
WALKER, JOHN KEVIN
PAGE 3

026804

ACTION TAKEN:
(cont'd.)

time line showing that on 01-17-89, a call was placed from Walker to Gable's residence, at 4:22 p.m. Walker stated that prior to 01-17-89, Frank Gable had been to Albany and he had fronted Gable an ounce of dope, he believed, and he was calling Gable to attempt to obtain his money. He stated that, at the 4:22 p.m. phone call to the Gable residence, for a length of two minutes, he is not sure if he actually spoke to Gable at that time. I then displayed phone toll information showing that on 01-17-89, at 5:38 p.m., a second phone call originated from Cub Quick Printing in Albany, to the Gable residence for a duration of five minutes. On that particular phone call, Walker does believe that he spoke with Frank Gable for five minutes. He stated that he would not have talked to Janyne Gable for that length of time, nor did he believe anyone else, when he had called in the past, had been authorized to answer the phone, except Janyne or Frank Gable. He stated that he was aware that during that time period, Mickey Goss was living in and out of there; however, he assumed that Goss may have been on the run and he has never known Gause to answer the phone.

I noted the 18th of January, 1989, at 9:27 a.m., a call went from Cub Quick Printing in Albany, back to the Gable residence, for five minutes. In discussing both of these calls, Walker again stated that they were relating to the dope deal where he had fronted dope to Gable and he was attempting to get his money from Gable. He also stated that Gable was, at the same time, talking with him about other deals that he was attempting to cook up, to include a run to California for more dope, and also, he stated that Gable was trying to get he (Walker) involved in a deal with Mark Gessner to ship five hundred M-16 rifles out of the country on a gun deal. Walker stated that he wanted no part in any kind of operation of that size, because he did not trust Gable, or anyone Gable was associated with, for a job of that magnitude. In discussing gun deals, Gable had purchased a gun from Walker, prior to the murder, which Walker described as a Smith & Wesson .357 magnum with a six inch barrel, pack mire grips. He believed it was approximately two months prior to the murder and Gable had paid him \$150 for the weapon and a black leather holster.

Walker stated that on the evening of 01-17-89, he believed he came to Salem and had visited with friends, Paul Farm. He knew that Paul Farm's apartment was located on Hyacinth Street near Portland Road. In discussing the location of that apartment complex, I asked Walker, had he ever been to a small white house, located near that intersection and he stated that he had not, that he knew that the residence was a heroin hang-out for a number of people and he had never been to that location. It should be noted this would be the residence described as the residence where John & Kelly Bender were living, at that time.

Walker stated that during that time, in January, 1989, he was driving a blue 1973 Ford Ranchero, bearing license plates PSN 077. Walker was asked if he had been involved in any discussions with Gable about Michael Francke and he stated, emphatically, that he had not. He stated that he was

503-926-3728C 254 BD 56A
MCI DETAIL OF CURRENT CHARGES
MCI LONG DISTANCE

PAGE 2

	DATE	TIME	CLASS	TO	FROM	NUMBER	MIN	NET CHARGE	
CALLS BILLED TO 926-5384:									
1.	1/06	1053AM	D	TO	SALEM	DR	364 3366	.33	D1
2.	1/06	1117AM	D	TO	SALEM	DR	364 0940	.33	D1
3.	1/06	454PM	D	TO	SALEM	DR	364 0940	.33	D1
4.	1/09	157PM	D	TO	LYONS	DR	859 2640	2.06	D1
5.	1/09	400PM	D	TO	SALEM	DR	581 6601	1.07	D1
6.	1/09	436PM	D	TO	BANKS	DR	324 3990	.60	D1
7.	1/10	107PM	D	TO	SCIO	DR	394 3322	.32	D1
8.	1/10	139PM	D	TO	GLEN ELLYN	TL	312 658 1799	2.07	D7
9.	1/10	202PM	D	TO	LYONS	DR	859 2640	.63	D1
10.	1/10	454PM	D	TO	LYONS	DR	859 2640	.58	D1
11.	1/11	108PM	D	TO	LYONS	DR	859 2640	.63	D1
12.	1/11	450PM	D	TO	SALEM	DR	588 6550	.33	D1
13.	1/12	1001AM	D	TO	SALEM	DR	364 3289	2.56	D1
14.	1/12	339PM	D	TO	SALEM	DR	362 8398	.33	D1
15.	1/12	340PM	D	TO	SALEM	DR	390 7735	1.07	D1
16.	1/13	1124AM	D	TO	LYONS	DR	859 2640	.58	D1
17.	1/13	1248PM	D	TO	BANKS	DR	324 3990	.34	D1
18.	1/13	236PM	D	TO	SALEM	DR	364 3289	.33	D1
19.	1/16	1159AM	E	TO	SALEM	DR	390 7735	.43	E1
20.	1/16	1201PM	E	TO	SALEM	DR	581 2014	.43	E1
21.	1/16	425PM	E	TO	SALEM	DR	364 4589	.25	E1
22.	1/17	142PM	D	TO	SALEM	DR	390 7209	.33	D1
23.	1/17	329PM	D	TO	SALEM	DR	390 7209	1.07	D1
24.	1/17	333PM	D	TO	SALEM	DR	581 1821	.33	D1
25.	1/17	422PM	D	TO	SALEM	DR	581 3812	.58	D1
26.	1/17	526PM	E	TO	LYONS	DR	859 2640	.62	E1
27.	1/17	535PM	E	TO	SALEM	DR	362 1458	.43	E1
28.	1/17	538PM	E	TO	SALEM	DR	581 3812	.99	E1
29.	1/17	544PM	E	TO	SALEM	DR	581 7025	.25	E1
30.	1/18	927AM	D	TO	SALEM	DR	581 3812	1.32	D1
31.	1/18	125PM	D	TO	SALEM	DR	390 7209	1.57	D1
32.	1/18	245PM	D	TO	SALEM	DR	588 6550	2.31	D1
33.	1/18	259PM	D	TO	SALEM	DR	581 1181	.33	D1
34.	1/18	454PM	D	TO	SALEM	DR	390 7209	1.75	D1
35.	1/18	521PM	E	TO	SALEM	DR	390 7209	.49	E1
36.	1/18	550PM	E	TO	SALEM	DR	390 7209	.25	E1
37.	1/19	1137AM	D	TO	SALEM	DR	581 1181	1.32	D1
38.	1/19	1150AM	D	TO	SALEM	DR	390 7209	.58	D1
39.	1/19	1255PM	D	TO	SALEM	DR	390 7209	.33	D1
40.	1/19	209PM	D	TO	SALEM	DR	390 7209	.58	D1
41.	1/19	315PM	D	TO	SALEM	DR	390 7209	.33	D1
42.	1/19	327PM	D	TO	SALEM	DR	390 7735	1.82	D1
43.	1/19	402PM	D	TO	SALEM	DR	581 3812	1.57	D1
44.	1/19	423PM	D	TO	SALEM	DR	581 3812	.83	D1
45.	1/19	452PM	D	TO	SALEM	DR	390 7209	.33	D1
46.	1/19	453PM	D	TO	SALEM	DR	581 3812	.33	D1
47.	1/19	538PM	E	TO	SALEM	DR	581 3812	.43	E1
48.	1/19	541PM	E	TO	SALEM	DR	390 7209	.43	E1

0008194

INVESTIGATION REPORT

CASE: FRANK EDWARD GABLE
WITNESS: Vickie Boyd-Warren - aka: Vike Jean Olson
185 N.E. 23rd. Street
Salem, Oregon
ATTORNEY: Robert Abel/John Storkel
INVESTIGATOR: C. Hamilton
DATE: July 19, 1990

On the above date I met with Ms. Boyd-Warren at her home in Salem, Oregon. I introduced myself to her as one of the investigators working on behalf of Frank Gable and for his attorneys.

Ms. Boyd-Warren said she met Mr. Gable at the Cornerstone Drug Program in September or November of 1987. She reported talking to Det. Glover from OSP about the Gable case but was unsure exactly when. She did recall being interviewed by him while she was at OWCC.

Continuing, the witness said Det. Glover had a copy of the log sheet that she had signed in on when she reported to her probation officer. She said, "they had that I had signed in on January 17, 1989 at 4:10 PM." Ms. Boyd-Warren said she talked to her probation officer and "left close to 5:00 PM and know I wasn't there longer than an hour. I went to my trailer then I drove to Shelly's (on 14th. and Hines) and the house was totally empty." Ms. Boyd-Warren said she wasn't certain of the time she left for Shelly's but thought it was about 6:00 PM. The witness explained that Shelly

002533

Boyd-Warren/Hamilton Page 2

Thomas was in the process of moving back in the house with her daughter, Amber.

Ms. Boyd-Warren said she believed she was at Shelly's house about 6:00 PM when Shelly got a phone call and talked about five to seven minutes then said to her that there was a friend of hers on the phone. Ms. Boyd-Warren said she got on the phone and it was Frank Gable. The witness said they talked for about 10 minutes as they hadn't seen each other in awhile and Frank told her he was coming over. The witness said, "Frank told me he was going to bring me some drugs but he didn't say what time. I waited for five to ten minutes and decided to run back home to get my "rig." (Equipment for injecting drugs.)

Ms. Boyd-Warren said she went back to her trailer and wrote her boyfriend, Kevin, a note. At this point the witness said she couldn't remember if Kevin was at the trailer and went back to Shelly's with her or if she wrote him a note telling him where she was. She said she would have written him a note if he hadn't been there.

Ms. Boyd-Warren said she thought she went back to Shelly's about 8:00 PM and Frank Gable wasn't there but he had left the drugs for her.

002539

Boyd-Warren/Hamilton Page -3-

Ms. Boyd-Warren said Jeanne Swartz talked her into talking to Steve Jackson while she was at Women's Release Center. She said she believed Mr. Jackson also talked to Corrinne Jessup.

Ms. Boyd-Warren said she talked to the Grand Jury and most of their questions were about Johnnie Crouse and where they met and what they discussed at the probation office on the 17th. of January.

The witness said she was also questioned about rumors in the jail and stores about corruption. Ms. Boyd-Warren said she had heard rumors that a drug family ran the corruption organization in the jails and were responsible for thefts, fires and drug distribution.

Ms. Boyd-Warren said she worked for Prison Industries in 1988 and her job was up to follow-up on orders. She said the files were in disarray and she often was not able to find orders for work and the files would disappear.

002540

E. R.-1282

17th 4p = Cam home.
been at Chris Whittles =
✓

18th 6¹⁵ A - Came home to
take you to work -
3p - no Lunch

~~18~~ Gaila Roommate
of Chris on Cross St.

17th 5-6 people could have
stopped by.

Jerry & Elaine
Cross -

Brought Gary Up =
to look at guns in
Carol Spence =

Mickay or Earl Childress
Picking at end of short day -

18th - no lunch =

Received = 72 hrs
notice letter - in day.

Jay 17th =

Scott & Anesa Came
Up = from downstairs
Apprentice Electrician?

(Robert = ? Chris house) 022822

E. R.-1283

Sep 27, 1989

7³⁰ A

On D8 Lu for
Sabu Re: Frucke
Cee -

8⁰⁰ A

GHA - Re:
Frucke -

Interview with
Marilyn Goble
Re: Franks who says
11/7/8

3⁰⁰

GHA -
Mickey Goss - Tall
There off 4 on =
4p - 16 =

Mickey Goss

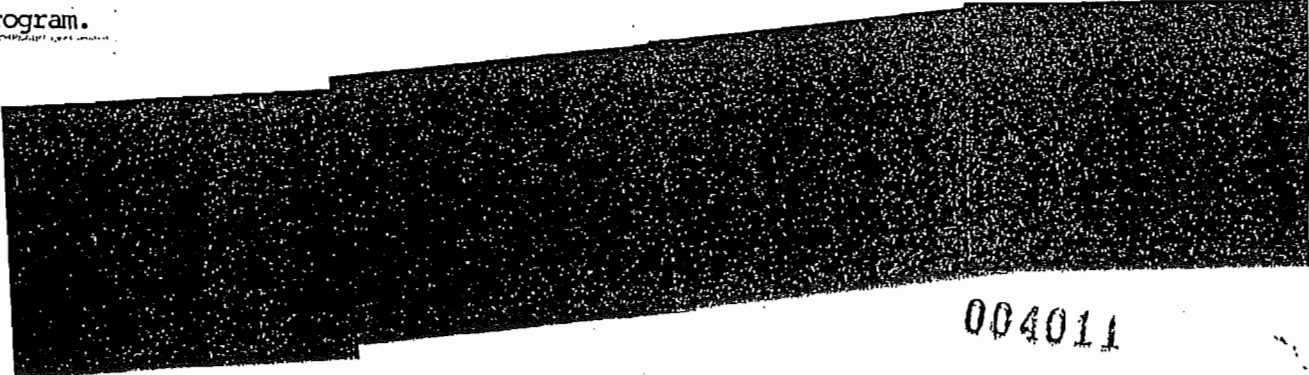
022852

ATTORNEYS : Robert Abel and John Storkel
CASE : State of Oregon v Frank Edward Gable
SUBJECT : Interview report
INTERVIEWEE: Kenneth Morie Farrell
OCCUPATION : unknown
ADDRESS : 130 24th Street, S.E.
Salem, Oregon
TELEPHONE : none

I interviewed Kenneth Morie Farrell on April 26, 1991 at 2:20 p.m. in his residence. I informed him of my purpose and my identity before he furnished any of the following information.

I contacted Kenneth Farrell for information about hospital visits with Michael Weaver during January 1989. Mr. Farrell related that his friend, Michael Weaver, was injured by a log truck during early January 1989. He was placed in the Salem Hospital for treatment. (Hospital records show that Michael Weaver was a patient in the hospital from January 13 through January 17, 1989.)

During this period of time, Kenneth Farrell and Frank Gable went to visit Michael Weaver. They visited him every night. Kenneth Farrell was unable to visit Michael Weaver on his last day of hospitalization because he went to Graduate Group at the Cornerstone program.



004011

ATTORNEYS : Robert Abel and John Storkel
CASE : State of Oregon v Frank Edward Gable
SUBJECT : Interview report
INTERVIEWEE: Gordon Elwood Martin
OCCUPATION : Inmate
ADDRESS : Marion County Correctional Facility
4000 Aumsville Highway, S.E.
Salem, Oregon
TELEPHONE : none

I interviewed Gordon Elwood Martin on May 1, 1991 at 1:15 p.m. in the Marion County facility, in the presence of Catherine Conrad, who is Mr. Martin's attorney. I had previously been given permission from her to interview her client. I informed Gordon Martin of my purpose and my identity before he furnished any of the following information.

Gordon martin related that his sister, Tracy Knepper, delivered a baby at Salem Hospital around January 16, 1989. He recalls that he was at the hospital frequently so that he could see his sister, his friend Wayne Knepper (aka Horse Head"), and his baby niece.

Gordon Martin remembers observing Frank Gable at the hospital during that time period. He recalls that Frank Gable was accompanied by a man with dark hair. He observed on one occasion that Frank Gable had parked in the parking lot near the covered walkway that leads from the general parking lot to the hospital.

Gordon Martin furthermore recalls that he had a conversation recently in the lunch room at the Marion County Correctional Facility with Rick Kienitz (aka "Shitty Rick"). During this conversation, Rick Kienitz told him that he had made up the story about Frank Gable in

202

INTERVIEW REPORT -- MARTIN

PAGE 2

order that he could cut some time off of his Idaho sentence. Rick Kienitz indicated that he cut a deal with the State. Rick Kienitz said to Gordon Martin that he (Kienitz) had heard that the way to get out of a sentence was to cut a deal with the State about Frank Gable.

028290

13

the door and I was at Shelli's house and I kind of looked out the window and he was like pissed off 'cause I owed him some money or his old lady some money, or he thought I did, and so we didn't even answer the door 'cause we knew he was just going to hound us for some dope. That's why we didn't answer the door. And that was real close to that time, too. () You know, they gave me money to invest for them and sell the dope.

BAIN: Had he given you money to buy dope?

GABLE: You know they gave me money to invest for them and sell dope.

BAIN: How much?

GABLE: \$20.00.

BAIN:

GABLE: I think it might have been; I'm just not sure.

BAIN:

GABLE: She came out to our house one night. She brought a case out there (). She got a ride out there (). I wrote some of that stuff on paper, like, I remember it was real close to this time. I wrote when payday was, which was on like a Friday. She got paid on Thursday or Friday and I took the money out and I told her, "Okay, well, I'll see you such and such a date," (). It seemed like that was ().

BAIN: Did you pick Jessica up?

(Conversation I couldn't hear)

BAIN: Why did the landlady evict you and Janyne from the Hawthorne apartment?

GABLE: The landlady said there was too much traffic coming in and out. Well, she said there was too much traffic. She said that the lady next door was complaining about too much noise. Too much traffic and the reason they kicked us out was Scott downstairs, the guy (), he was doing that night; he was mad. He threw his plate out and it shattered. Well, the lady came out. She didn't like us because I told her I ain't paying for the damn thing. You parked behind me. If you know I didn't have a driver's license () you park right behind me. So, she was mad and filed small claims on us and the landlady and she were good friends.

ACKOM: I'm going to have to interrupt the conversation at this time. The time is 5:30 p.m. I'm going to switch sides of this tape.

CASE NUMBER SP8900672		INFORMATION REPORT DEPARTMENT OF STATE POLICE SALEM, OREGON 97310		<input type="checkbox"/> Gen. Hdq. <input type="checkbox"/> Arson <input type="checkbox"/> Document <input type="checkbox"/> Dist. Hdq. <input type="checkbox"/> Narcotic <input type="checkbox"/> Ident. <input type="checkbox"/> Crime Lab <input type="checkbox"/> Other <u>Marion County D.A.</u>	
AGENCY OREGON STATE POLICE - SALEM					
1. TYPE OF REPORT X <input type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution—Complainant <input type="checkbox"/> No Prosecution—Dist. Atty. X <input type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER	
4. Original Report Date 01-18-89, Wed.	5. Time 12:48AM	6. Written By Kenneth P. Pecyna, Det.	7. This Report — Date 01-30-91	8. Time 1:25 PM	9. County Marion
10. Victim or Complainant FRANCKE, JAMES MICHAEL		11. Residence Address 2715 058 Hazelnut Ridge Rd. Scotts Mills, OR 97375		12. Res. Phone —	13. Sex M
14. Race W		15. D.O. 100246		17. Total Value of Recovered Prop. (Itemize Below)	
16. Subject of This Report FOLLOW-UP INVESTIGATION/FRANK GABLE INTERVIEW					
18. Details: (Use Additional Plain Sheets as Necessary)					

REFER TO: All reports bearing General Headquarters Case #SP8900672.

SUSPECT: ~~GABLE, FRANK EDWARD~~
(In Custody)

NARRATIVE: On January 18, 1989, at 12:45 a.m., security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections' Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

ACTION TAKEN: At 1:25 p.m., on 01-30-91, Detective Fredrick E. Ackom and Detective Paul Bain received from Sergeant John P. Salle the 11-03-89 interview tapes of Frank Edward Gable.

At 2:00 p.m., on 01-30-91, Detective Paul Bain and Detective Fredrick E. Ackom began listening to the tapes at the Marion County Courthouse in Salem. Detective Fredrick E. Ackom, Detective Paul Bain, and Sergeant John P. Salle continued listening to the tapes on 02-07-91, at 3:00 p.m.

This subsequent transcript is the combined efforts of Sergeant John P. Salle, Detective Paul Bain, and Detective Fredrick E. Ackom, and was provided utilizing sound equipment to enhance the quality.

CASE STATUS: Continued.

Reporting Officer(s) <i>[Signature]</i> Sergeant John P. Salle		Off. I.D. Number 771-21		APB Numbers and Dates		Approved By	
C Agencies Notified		Date Time Method					

think he took her to the upper NW apart it in the northern building. It appeared to be the apartment above #230.
6:20 PM- Kevin left this location and returned to Godloves apt.

On this same date, I went back to the place on Lancaster where I followed Kevin on the 13th. I wanted to get a house number for my report. Much to my surprise there was nothing that appeared oriental about the place and there was a very blonde female at the window. There is no Number on the apt. but the place below it is number 3233 Lancaster N.E.

October 19, 1990:

I watched Kevin's apartment for about two hours. There was a lot of traffic in and out of #D and #C. Godlove and Kevin both go back and forth between these two apartments often. It seemed they were doing laundry and cleaning the apartment. Most of the traffic that goes in and out seems to be other tenants in the complex. It seems that another blonde female is living with them also.

October 22, 1990:

I went to 3755 Hawthorne N.E. and talked to Lavonne Spencer, the Manager of the apartments where Frank Gable used to live. Mrs. Spencer told me, she had been managing the apartments for about nine years and did remember the Gable's. We talked a long time. Mrs. Spencer told me that she did not have any of her rental records on the Gable's, because the Police had taken them for the D.A. She told me, they had promised to give her copies of her records, but she had not received them. Most of what she told me was from what she could remember.

It was difficult for her to remember specific dates. I asked her what she remembered about the Gable's. Spencer described Janyne Gable as a quiet woman who kept to herself most of the time. Janyne was a good tenant until she married Frank. Spencer told me that Janyne had lived in the apartments for sometime before Frank came into the picture.

Spencer described Frank as a bristly, irritable person most of the time, but that occasionally, he was nice to talk to. Spencer felt that he was more irritable with her, because she was always having to talk to him about the problems that came up after he moved into the apartment. Spencer told me, she had never seen Frank with any weapons or fighting with any one. I asked her if she had seen any signs of bruises on Janyne while they lived there? Spencer told me, Janyne did not come out of the apartment much and that when she did, she always wore dark glasses. Spencer did not recall seeing any signs of bruising. Spencer said, there was a lot of traffic in and out of the apartment all the time, but mostly at night. She said she got many complaints from the other tenants and had given the Gable's warnings on several occasions. Soon, the Gable's started getting behind with the rent and Spencer gave them 72 hours notice of

eviction on several occasions. Spencer said they always came up with the money at the last minute.

Spencer told me, the Gable's had a very strange man live with them for about two weeks during the summer of 1988. Spencer described the man as 35 to 45 years of age, sharp face, brown hair, piercing eyes approximately 6' tall and very thin. Spencer told me, he sat on the Gable's balcony every day and stared at every one in a manner that made them very uncomfortable. She said, he drove Frank's car while he was there.

Spencer told me, on the night of January 17, 1989 the night Michael Francke was killed, she was awakened by noise coming from the Gable's apartment. She is not sure what time it was, but said she goes to bed at 11:00 PM every night. It had to be some time after that, that she heard people running up and down the stairs to Frank's apartment all night long and that it was louder and more frequent than usual. Spencer told me that she had received many complaints on the traffic at Gable's apartment and had talked to Frank numerous times and that this was the final straw. The next day, January 18, 1989 Mrs. Spencer served Frank with an eviction notice. She told me, she was tired of talking to Frank about the noise till 2 or 3 in the morning and the cars parked in front of the stairs blocking other tenants in. The Gable's had to move. Spencer said, "Frank was really pissed when I gave him the eviction notice." I asked if he moved right away? She told me that she had to follow the process of eviction to the point of posting a deputy at the door.

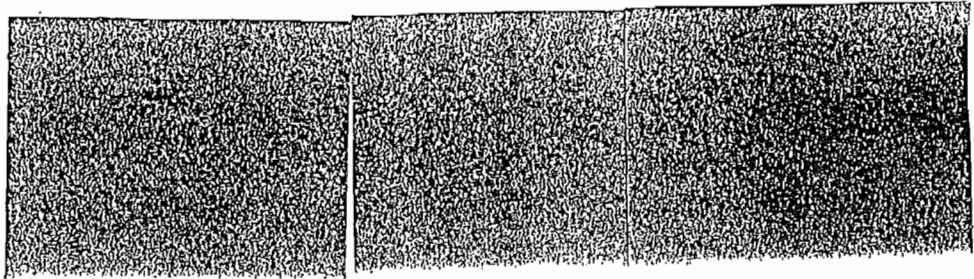
According to Spencer, Gable ran around a lot with Jerry L. Cross who lived with Elaine LaPoint in apartment #45. Spencer told me, Jerry Cross was worse than Frank and that he was always in a confrontation with someone. One tenant in particular, was Laurie Savare. Spencer said, Jerry and Elaine would fight out in the parking lot, but she never saw the Gable's fight in public. Spencer subsequently evicted LaPoint and Cross as well. Spencer told me neither Frank or Cross appeared to have any normal employment.

Spencer told me, along toward the end of that time Janyne had shown signs of trying to break away from Frank. Frank would leave Janyne's child, Jessica (a preschooler) alone when he was supposed to be watching her. One day Frank's Parole Officer came to the apartment looking for Frank and found the child alone. Spencer told me, the P.O. called CSD and that a Police officer responded to the apartment. The P.O. and the Officer apparently called Janyne because, Janyne called Mrs. Spencer and asked her if there was any one in the apartment complex that could watch her child for her. Mrs. Spencer referred Janyne to her niece Maryann Gramason who lived in another apartment there.

On another occasion, Janyne called Spencer and told her not to let Frank into the apartment. According to Spencer, Janyne said, He's really done it now and it's gonna hit the fan! This was shortly after one of the 72 hour notices was given by Spencer. Spencer could not recall the date, but said everything is documented in the records she turned over to the Police.

On another occasion, a friend of Frank's came to Spencer's door asking for the key to Gable's apartment. Spencer told him she

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991



1 know if it was money or -- I don't know. He just
2 took off.
3 CUMMINS Are you familiar with the fact that he was evicted
4 from that [inaudible] apartments?
5 DOWD That's right. That's right. He was evicted.
6 Yeah. Yeah, that's correct.
CUMMINS Do you remember that period of time?
DOWD Yeah. Somewhat. I mean it's kind of faint, but I
9 remember a few things.
10 CUMMINS Okay. That's fine. Do you remember the fact that
11 he was given an eviction notice?
12 DOWD Yeah. Uh huh.
13 CUMMINS Okay. Now, do you remember -- I mean, how did you
14 know about it? Did he tell you?
15 DOWD Um, let me think now. 002415
16 CUMMINS Okay.
17 DOWD I think, I think that -- yeah, it was either he or
18 Janyne showed it. I think that Janyne had it or
something and showed it to us.
CUMMINS Okay. This is the details [inaudible]. He says
21 that -- on the day before he got the eviction
22 notice on [inaudible] apartment, that he was

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 coming over. And that he was doing a pretty big
2 dope deal during that day. The day before, the
3 night before he got noticed. He got noticed on
4 the 18th of January. And he said on the 17th of
5 January that he was upstairs doing a dope deal,
6 and that you and your wife were having a pretty
7 big argument that night, and he specifically
8 recalled that a plate was thrown through a window.
- DOWD Yeah. I remember that night real clear now.
10 Yeah.
11 CUMMINS Okay. So, can you -- you are telling me that you
12 remember that argument you had with your wife?
13 DOWD Yeah. Well, actually it wasn't an argument with
14 my wife. I was really, really upset, mad, because
15 Frank owed me a bunch of -- or, not a bunch of
16 money, but -- he owed me, like, \$160.00, and I had
17 been trying to go up there and talk to him and get
18 my money, and he'd been putting me off for weeks.
19 He really scabbed me, I mean, he really took
20 advantage of me many times. But, he wouldn't let
me -- he just kept putting me off, and I was
getting so mad, and there was no food in the
23 house, and I wanted to get his attention, so I.

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 went downstairs and my wife and I were hollering.
2 I was hollering because I was angry, but, but we
3 were kind of having a money argument, I guess, but
4 mainly my anger was towards Frank. So I went
5 outside and I threw a plate, and I didn't hit
6 anything with it, but it made a lot of racket when
7 it hit the ground out in the parking lot.
8 CUMMINS Oh, I see.
9 DOWD [inaudible] him a little bit.
10 CUMMINS So you threw the plate not at his apartment or
11 through your window or anything, it was on the
12 ground.
13 DOWD Yeah. He didn't even know. He just heard a loud
14 crash. I went out through my door and I went out
15 and I threw it and it shattered on the ground in
16 the parking lot, and then it got his attention.
17 And then he came down and talked to me. Because
18 he knew that -- he thought that I had made that
19 noise.
20 CUMMINS Had you been up to his apartment two or three
21 times before that night? Trying to get --
22 DOWD I think he -- I had called up there, and I know I
 had gone up there at least once. And I just kind

Dowd/001

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 of got the brush off. I think later he explained
2 to me that there was people in there -- that he
3 didn't want me in there.

4 CUMMINS Did he say -- mention that a dope deal was going
5 down?

6 DOWD Not -- no -- yeah. I mean, even if he didn't
7 mention it, I wouldn't have know that's what it
8 was.

9 CUMMINS So basically, you were aware that, hey, there was
some people upstairs and shit was going on, dope
10 deal, and you just wanted your money, but he
11 didn't want you up there because of the
12 circumstances, right?

13
14 DOWD Yeah. And he didn't want to give me my money
15 because he wanted to put me off longer, maybe he
16 didn't have it at the time, or he wanted to keep
17 it to reinvest it and maybe make more for himself,
18 you know.

19 CUMMINS Uh huh.

20 DOWD He was just kind of -- he knew I couldn't really
21 do much to him.

22 CUMMINS Yeah. So, he was just putting you off?

DOWD Yeah. He did. For the hundreth and seventh time.

Dowd/001

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 CUMMINS What did you loan him the money for?
2 DOWD It was all drug related?
3 CUMMINS Okay. Did you do drugs at that time?
4 DOWD Yeah.
5 CUMMINS Okay.
6 DOWD Yes, I did. I was.
7 CUMMINS And since then, you've quit?
8 DOWD Yes, definitely.
9 CUMMINS Okay. Good for you. Good. Now, let me ask you
this. Do you remember about what time that all
10 went down? Was it light, was it dark, was it
11 after dinner? Can you put that in that time
12 perspective for me?
13
14 DOWD Yeah. It was definitely at night. It was -- I
15 think it was quite late. Like, what, after --
16 just a second, my wife kind of remembers.
17 CUMMINS Okay. If you guys can kind of discuss it and
18 figure out something. Maybe some sequence of
19 events happened that night that you can remember.
20 DOWD We're not -- she's not really sure, but it seems
21 to me that it was like probably after 10:00 at
22 night, I think. I'm not sure exactly. It could

Dowd/001

13

002419

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 have even been after midnight. I'm not really
2 sure.
3 CUMMINS Okay, but it was --
4 DOWD It was real late and
5 CUMMINS It seemed to be in the later end of the evening as
6 opposed to like 5:00 or 6:00, right?
7 DOWD Oh, definitely. Yeah, it was definitely late.
8 CUMMINS Okay. Now -- go ahead.
9 DOWD It could have even been like 1:00 or 2:00 in the
morning.
1 CUMMINS The landlord mentioned something about -- when we
12 talked to the landlord, she showed us the papers,
13 and she showed us that the papers were served on
14 the 18th of January, and she said that part of the
15 problem, of course, he wasn't paying the money,
16 but the ultimate problem was that he was having a
17 party that night by which she saw was people
18 coming in and out -- you know, a number of
19 people -- but he was trying to be quiet because of
20 the dope deal, and that --
21 DOWD Yeah.
22 CUMMINS -- and you were raising some Cain [inaudible]
started yelling and you threw a plate and whatnot.

Dowd/001

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 So the landlord pretty much figured it was Gable
2 partying.

3 DOWD Yeah, that's right.

4 CUMMINS Can you tell me anything about that? When you
5 say, "that's right," what makes you say "that's
6 right?"

7 DOWD Yeah, but that's correct because I knew they got
8 the notice -- I found out later, they got the
9 * notice, and I'm not sure how -- I was aware that
10 he had been, that she misunderstood and thought it
11 was him making the racket out there that night. I
12 knew it wasn't. But he had a lot of traffic and
13 there was quite a few people, and I'm sure that
14 was noisy with all the cars and stuff.

15 CUMMINS Are you able to tell me any of the names of the
16 people you saw that night?

17 DOWD What's that now --

18 CUMMINS Okay. That night that we just talked about, where
19 there was ruckus with the plate and that you were
20 going up a couple times and trying to get a hold
21 of him to get your money. Are you able to
22 identify any of the people that were over there?

Dowd/001

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 DOWD No. I'm not sure who all was there. There was,
2 you know, I wasn't even paying attention to who
3 was there.
4 CUMMINS But nobody sticks out in your mind as any
5 particular person?
6 DOWD No, nothing jumps out. Nuh uh.
7 CUMMINS No vehicles that you saw people come in, or that
8 you say, "Oh, that's so and so" in your mind?
9 DOWD Um, I don't think -- boy, I'm not sure. You know
10 there was so many nights that people were there.
11 I would say that I remembered a certain vehicle
12 and it was maybe a different night. I remember a
13 couple different vehicles that were over there
14 late at night, but I don't know about that night.
15 CUMMINS Do you remember the first time you contacted Gable
16 that night? Like for example, let me tell you
17 what I'm thinking about. You [inaudible] that
18 [inaudible] attempts to contact Frank, and the
19 plate and whatnot happened in the late, later
20 part. It could have been around 10:00, it could
21 have been around midnight. Did you see him come
22 and go prior to that? Did you talk to him? Is
there anything that can zero in on the time frame?

Dowd/001

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 DOWD I'm not sure. I believe that that day was another
2 day -- I had been put off several -- many, many
3 days before, and so I know that when I got off
4 work, I would have went straight up there to see
5 if he'd gotten my money yet. I don't remember if
6 he was there or if Janyne was there or what when I
7 got off work. It seems to me that he wasn't there
8 when I first went up.
9 CUMMINS What time did you get off work?
10 DOWD That would have been around 6:00 or so in the
11 evening. 5:30 or 6:00 or something. I don't
12 think he was there then. I'm not sure though.
13 CUMMINS Okay.
14 DOWD Because like, I checked back, you know. I'd see
15 his car pull up and then I would go up and see if
16 he there yet or whatever.
17 CUMMINS Are you able to put a closer time to any degree
18 and when you might have -- he might have been
19 around?
20 DOWD No, I'm not sure. All I know is that -- I really,
21 I can't really say. I hate to guess. I know it
22 was late when I finally -- I'm not even sure -- I
may have even talked to him earlier, you know.

lwd/001

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 The first time I talked to him may have been
2 earlier in the evening and then later. All I ever
3 remember that night is that outburst I made and
4 everything. I remember the late part of it pretty
5 well.
6 CUMMINS Yeah. And you remember later on the landlord sort
7 of mistaken that Frank was causing the commotion?
8 DOWD Yeah, and my wife added here, she had talked to
9 the landlord about it, and she said the landlord
10 said it was -- alot of it was the traffic coming
11 in and out, and the cars, and how late it was, and
12 all the noise of the cars going in and out.
13 CUMMINS So, basically, did he -- when he came down to talk
14 to you, say "Hey, you know, I've got a dope deal
15 going down. I don't want you up there. You know,
16 people are freaked and shit. You know, that's
17 what's happening. I'll meet you later."
18 DOWD Yeah. More or less, something like that, yeah.
19 CUMMINS Did he stay there all night?
20 DOWD What's that?
21 CUMMINS Was he there all night? Do you know?
22 DOWD I -- I'm not sure. I'm not sure really.
 CUMMINS Okay. That's fine.

dowd/001

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 DOWD I wouldn't think he would have been. I think he
2 would have come in and out like usual. He was
3 always running around, doing something.
4 CUMMINS Yeah. He dealt drugs, right?
5 DOWD Oh, definitely. Yeah.
6 CUMMINS And he was the one who got you drug [inaudible] at
7 that time?
8 DOWD Yeah. Well, one of them. Yeah. He was the one
9 that was -- he was quite a sales person as far as
10 sucking in somebody who's naive, and I was quite
11 naive and I mistook him for our friend and
12 everything.
13 CUMMINS Okay. Actually, I understand that he was kind
14 of -- he's kind of [inaudible] to some degree.
15 DOWD Oh, yeah. I was pretty, pretty open eyed -- I
16 mean, I didn't really understand much.
17 CUMMINS How old are you?
18 DOWD I'm 22.
19 CUMMINS Okay. Do you have a criminal record of any sort?
20 DOWD I've got something in Oregon. Criminal mischief
21 II and DUF II [phonetic] or something like that I
think.
CUMMINS How old were you?

Dowd/001

002425

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 DOWD I was 19 or 20. And I don't know if it's on my
2 record or not because the -- it was -- I forget
3 what the word was that we used. We paid -- it was
4 kind of like dismissed type thing or something.
5 We paid --
CUMMINS Civil compromise?
7 DOWD What's that?
8 CUMMINS Civil compromise.
9 DOWD Yeah. Civil compromise. Yeah, that's right.
10 CUMMINS Sounds to me like it's not on your record. That
11 stuff's pretty much pretty minor.
12 DOWD Yeah. That's all though.
13 CUMMINS Good. Good for you. Okay, where do you work now?
14 What do you do now in Alaska?
15 DOWD I work for the City of King Cove [phonetic] and I
16 run the power house down here. The light system
17 for the town. I'm assistant to that.
18 CUMMINS Oh, great. Good for you.
DOWD Yeah, it's a fun job.
20 CUMMINS Yeah, you're doing quite well. Why did you go to
21 Alaska, just on a personal note?
22 DOWD

002426

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 and couldn't live on that and support my wife and
2 kids.

3 CUMMINS Well, listen. There is an outside chance that we
4 may need some testimony from you in this case.
5 Are you open to us flying you down here for a day
6 or two?

7 DOWD Yeah, I can do that, probably.

8 CUMMINS So, if it becomes necessary, you need to make some
type of arrangements without you being
-10 [inaudible] --

11 DOWD Yeah, if I know well enough in advance.

12 CUMMINS Okay. Our trial is starting March 7th and we
13 anticipate it's going to be a two or four -- four
14 or five months trial. All -- what I'm going to do
15 is basically I've taken notes and stuff of you
16 talking and taping. I'll go back and listen to
17 these notes and see what you had to tell me and
18 there may be other questions. Is there any
19 problems with me calling you back in case I have
20 something further?

21 DOWD No, that's no problem.

002427

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 CUMMINS Okay. And also, I'll let you know in plenty of
2 time, one way or the other, if you have something
3 that may be necessary. Okay?
4 DOWD Okay.
5 CUMMINS Now, also, write down my name. It's Bruce --
6 DOWD Okay. Hang on. Just a second. I'm going to get
7 another piece of paper here.
8 CUMMINS Okay.
9 DOWD Okay. What's your name, now?
10 CUMMINS My name is Bruce --
11 DOWD Bruce.
12 CUMMINS -- Cummins. C-U-M-M-I-N-S.
13 DOWD Bruce Cummins. Okay.
14 CUMMINS And you have my phone number. Correct?
15 DOWD Yeah. Yeah, I got that.
16 CUMMINS Okay. That's my home phone number. And let me
17 give you my office number in Salem.
18 DOWD Okay.
19 CUMMINS 581-4846.
20 DOWD 4846?
21 CUMMINS Yeah.
22 DOWD Okay.

002428

100/pwd/001

SCOTT DOWD INTERVIEW
Call from Alaska
January 2, 1991

1 CUMMINS Now if there's anything that comes up that you
2 remember, anything that I haven't asked you that
3 you feel is important, please feel free to call
4 collect, and if I'm not there, at least leave a
5 message and I'll talk to you.
6 DOWD Okay.
7 CUMMINS Meanwhile, thank you very much for taking the time
8 to talk to me, and I will be in contact with you
9 within the next week or two and coordinate things
10 and let you know.
11 DOWD Okay, Bruce.
12 CUMMINS Thanks so much, Scott.
13 DOWD Uh huh. Have a good evening.
14 CUMMINS Yeah, now, if there's anything that comes up in
15 your mind, go ahead and write it down on a piece
16 of paper so you don't forget.
17 DOWD Yeah, I'll do that.
18 CUMMINS And then even if you don't want to call me, when I
19 call you if you still have something in mind.
20 DOWD Okay.
21 CUMMINS Thanks a lot.
22 DOWD Uh huh. Bye.
CUMMINS Bye.
END OF TAPE

002429

JANYNE VIERRA
11/29/90 Interview
P.3

hour notice because Frank thought if he didn't answer the door, they wouldn't have to move. Frank was home when they got the second notice, but he was "off somewhere" when they got the 30 day notice at the end of January. She said the landlady handed it to her and bowed and apologized. She then said the final notice was posted on the door. She also said that she could not remember when all this took place, and might have the sequence mixed up, other than it was at the end of January, but that the dates are all in the police reports (McCafferty interjected, "Or in our notes!") and whatever is in those reports is how it all came down.

She recalled the people downstairs and the plate being thrown through the window, though she did not recall the date. She commented that the landlady came and talked to them about the plate because she thought it had been Janyne and Frank. She said that was kind of the last straw for the landlady.

After that apartment, she said, they lived on Highway Avenue, unknown apartment number for six weeks, then were evicted for non-payment.

Janyne then moved in with her mother and Frank went to live with Les on the Coast. She said this was early May.

She also recalled that they lived on Clearview in an apartment for three weeks, but that she ran away and stayed "just around places, mostly with Dan Walsh." "It's all in the reports," she said.

Just prior to leaving, I asked Janyne if there was anything that she had remembered since the meetings with the police which were the foundation for their reports, and she said "it's all in their reports because I call them whenever something pops into my head." Again, this was said with an attitude of enjoyment of her position with the cops, and the two men in attendance at that moment.

Prior to leaving Janyne's apartment, I asked for permission to call her occasionally if, when reviewing the discovery, I had questions. She agreed to that, but said I couldn't come around or call when Jessica (her young daughter) was home as she is just learning to be a child again and is an "earth mother" who would worry about Janyne. Also, she said it would depend upon her own mood that day whether or not I would receive answers from her.

Again, this part of the conversation seemed designed for the two men to see what a good mother she has become. She looked only at them as she answered me. In fact, there was not one time in either interview that she ever looked at me when she talked. She

E. R. -1307

CASE NUM: #89006		SPO Evidence Case #89-016		INFORMATION REPORT DEPARTMENT OF STATE POLICE SALEM, OREGON 97310		DISTRIBUTION <input checked="" type="checkbox"/> Gen. Hdq. <input type="checkbox"/> Arson <input type="checkbox"/> Document <input checked="" type="checkbox"/> Dist. Hdq. <input type="checkbox"/> Narcotic <input type="checkbox"/> Ident. <input type="checkbox"/> Crime Lab <input checked="" type="checkbox"/> Other <u>Marion County D.A.</u>						
AGENCY OREGON STATE POLICE - Salem												
1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution—Complainant <input type="checkbox"/> No Prosecution—Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER								
4. Original Report Date 01-18-89, Wednesday		5. Time 12:48 AM		6. Written By Kenneth P. Pecyna, Detective		7. This Report - Date 01-24-89		8. Time 3:30 PM		9. County Marion		
10. Victim or Complainant FRANCKE, JAMES MICHAEL				11. Residence Address 21058 Hazelnut Ridge Rd., Scotts Mills, OR				12. Res. Phone		13. Sex M	14. Race W	15. D.O.B. 10-02-46
16. Subject of This Report ADDITIONAL INFORMATION								17. Total Value of Recovered Prop. (Itemize Below)				

Details: (Use Additional Plain Sheets as Necessary)

REFER: To all reports bearing GHQ Case #8900672.

NARRATIVE: On 01-18-89 at 12:48 AM, security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

MENTIONED FOR HUSAKER, BETHEL WAYNE WMA DOB 01-25-45

DATA ENTRY: 730 Market Street NE ODL/3232210
Salem, OR 97301 Home Phone: 370-7329
Bus. Phone: 378-2276
Employed: Oregon State Hospital
Custodian

ACTION TAKEN: On 01-18-89 at 11:20 AM, writer contacted Bethel Wayne Husaker in the parking lot of the Corrections Division Dome Building. Mr. Husaker had arrived at the crime scene and contacted Sergeant Gary Chichester and advised that he had information concerning observations he had made while leaving his work the evening before (01-17-89). A signed statement was obtained from Husaker, of which a typed copy is attached to this report. (Refer to attached statement by Husaker for further details). In this statement, he basically advised that he is the custodian and the office he works out of is called the housekeeping office, located in the basement directly below the Dome Building. His office is located at the northwest end of the Dome Building. He advised that normally he gets off at 7:30 PM, however, on this date he was allowed to leave at 7:00 PM. At the time he was leaving, he went to pick up his property at 7:00 PM on 01-17-89, and walked up a stairwell from the basement located at the north end of the Dome Building, towards the front. At this point, he was walking north on the sidewalk towards the parking lot, when he heard someone yell out and that it sounded like someone had gotten hurt. At this point, he turned around in the direction of the noise, which was back over to the east

Reporting Officer(s) <u>Kenneth P. Pecyna, Detective</u>	Off. I.D. Number 1293-21
Other Agencies Notified	Date Time Method

APB Numbers and Dates

Approved By Date

KN 1-27-89

E. R.-1308

0041

MURDER GHQ #8900672
VICTIM: FRANCKE, JAMES MICHAEL
Page 2. (HUSAKER INTERVIEW)

ACTION TAKEN: of the center of the center island in the Dome Building parking lot. At this point, he observed one
(Continued) male subject running toward the Dome Building, wearing what appeared to be a darker trench coat.
He observed another subject running west from the Dome Building, and he was a white male with short
hair. He could tell it was shorter hair because he could see the ears, and this subject was wearing
a lighter colored, maybe beige, trench coat which went down to just above his knees. Husaker advised
that this subject went out of sight at approximately near the green generators at the building across
25th Street, where construction is being conducted.

Husaker advised that this subject running west also was running at full speed.

There is no further information on this report.

CASE STATUS: Investigation continuing.

KPP:ct
01-25-89

003844

HUSAKER, BETHEL WAYNE WMA DOB 01-25-45
730 Market Street NE
Salem, OR 97301 Home Phone: 370-7329
Bus. Phone: 378-2276
Employed: Oregon State Hospital (Custodian)

On 01-18-89 at 11:20 AM, Detective Kenneth Pecyna contacted Bethel Wayne Husaker in front of the Corrections Division Dome Building. Bethel Wayne Husaker gave the below statement in Det. Pecyna's notebook regarding the investigation into the death of Michael Francke.

"I went to work yesterday at 11:00 AM. (1-17-89) I was in the housekeeping office downstairs in the Dome Building. This is where the lower windows are on the northwest side of the Dome Building. I was leaving the room to go home, so I was going up the steps that lead from the bottom housekeeping room to the top. I was walking toward the parking lot on the north side of the Mental Health Administration Building. I was about half-way to the parking lot when I heard someone yell. I didn't notice any cars in the Dome Building parking area. I wasn't paying attention, though. I noticed in the parking lot where I was parked that there was four or five cars. I don't recall any descriptions on the cars. The yell was like someone was hurt, but there was no words. I turned around in the direction of the yell, which was back over to the east of the center of the center island in the Dome Building parking lot. One white male was running toward the Dome Building. He was wearing what appeared to be a darker trench coat. Both guys had shorter hair. The person running toward the front of the Dome Building had went out of sight and I thought he went inside. The other guy running west ran over toward the building, west of the Dome Building. He was a white male, short hair. I could tell it was shorter hair because I could see the ears. The trench coat was a lighter colored, maybe beige, and was down to just above his knees. It was a trench coat. He went out of sight by the green generators over by the building across the street. I could tell his pants were dark. I know the time was about 7:00 PM yesterday, because my boss let me get off at that time. I normally get off at 7:30 PM. I didn't hear any gunshots or anything. All I heard was the yell. The one guy running west was running at full speed. I waited by my car to see if I could see the guy running west to reappear and I didn't. The other guy, I figured, had gone for help. If I would have seen the other guy fall or something I would have checked further."

"This statement is true. It was given by me freely, without threat or promise."

/S/ B. Wayne Husaker

3845

CASE NUM. #8900672		SPO Evidence Case #89-016		INFORMATION REPORT DEPARTMENT OF STATE POLICE SALEM, OREGON 97310		DISTRIBUTION					
AGENCY OREGON STATE POLICE - Salem						<input checked="" type="checkbox"/> Gen. Hdq.	<input checked="" type="checkbox"/> Dist. Hdq.	<input type="checkbox"/> Crime Lab	<input type="checkbox"/> Other	<input type="checkbox"/> Arson	<input type="checkbox"/> Narcotic
1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution—Complainant <input type="checkbox"/> No Prosecution—Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER							
4. Original Report Date 01-18-89, Wednesday		5. Time 12:48 AM		6. Written By Kenneth P. Pecyna, Detective		7. This Report — Date 01-25-89		8. Time 9:45 AM		9. County Marion	
10. Victim or Complainant FRANCKE, JAMES MICHAEL				11. Residence Address 21058 Hazelnut Ridge Rd., Scotts Mills, OR		12. Res. Phone		13. Sex M		14. Race W	
										15. D.O.B. 10-02-46	
16. Subject of This Report ADDITIONAL INFORMATION						17. Total Value of Recovered Prop. (Itemize Below)					

8 Details: (Use Additional Plain Sheets as Necessary)

ER: To all reports bearing GHQ Case #8900672.

NARRATIVE: On 01-18-89 at 12:48 AM, security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

SUSPECT: White male, late 20's to early 40's, 6'0 - 6'1", 175-180 lbs., medium build, dark brown to black hair, short hair, could see ears. Clean shaven, could have had a mustache, but unknown. Beige colored, knee length trench coat, dark pants, unknown shoes.

MENTIONED FOR DATA ENTRY: HUSAKER, BETHEL WAYNE WMA DOB 01-25-45
730 Market Street NE
Salem, OR 97301 Home Phone: 370-7329
Bus. Phone: 378-2276
(Employed: Oregon State Hospital, Custodian)MENTIONED: HASKINS, JIM, Temporary Supervisor
Oregon State Hospital
CRAWFORD, TERRY L., Detective
Oregon State Police, Salem

EXHIBIT: One (1) oversized colored aerial photograph of Dome Building and surrounding grounds, signed by Husaker on 01-19-89 at 2:50 PM. Placed into SPO Evidence.

ACTION TAKEN: On 01-19-89 at 11:40 AM, writer contacted Bethel Wayne Husaker at the Salem Patrol office. Writer at this time returned to the Dome Building and the crime scene, accompanied by Husaker and Det. Crawford, at which time Husaker walked through the same path that he had taken on 01-17-89 after he had left work. On this same date, at 2:50 PM, writer interviewed Bethel Wayne Husaker at the Salem State Police patrol office. A signed statement was obtained, in writer's notebook, of which a typed copy is attached to this report. In this statement, Husaker advised that on 01-17-89, Tuesday, he came to work at 11:00 AM, and after the 3rd coffee break, around 5:45 PM, Jim Haskins (unknown correct spelling), fill-in

Reporting Officer(s) Kenneth P. Pecyna, Detective	Off. I.D. Number 1293-21
Other Agencies Notified	Date Time Method

APB Numbers and Dates

Approved By

Date

013846

K/V 1-31-89

MURDER GHQ #8900672
VICTIM: FRANCKE, JAMES MICHAEL
Page 2 (HUSAKER INTERVIEW)

ACTION TAKEN: supervisor, told him he could get off at 7:00 PM. When it was time to quit, he remembers looking at
(Continued) the clock before walking out and the time was 6:58 PM. His office is located in the Dome Building basement, in the northwest corner. He exits through a door on the north side of the Dome Building, toward the front. This exit leads to the stairs on the outside which go to the ground level. After exiting the Dome Building, he proceeded north on the sidewalk, toward his car which was parked in the northwest parking lot area of the Mental Health Division parking. At a point on the west side of the Mental Health Building, #33, he heard a "surprise hurt" sound, and when he turned in the direction of the sound he saw two males facing each other and immediately turning away in the opposite directions. This was in the north end of the parking lot, in front of the Dome Building. One male subject ran east to the Dome Building. The other male subject ran west, across the center island, down the driveway, crossing 23rd Street. This subject was last observed westbound on the north side of the building, directly west of the Dome Building across 23rd Street. (Refer to suspect description in attached statement by Husaker, and as listed in Suspect caption, above).

Refer to overview map of Oregon State Hospital grounds, which include the Dome Building area. This map is attached to this report. This map depicts the route that the suspect took. Writer showed to Husaker an oversized photograph (KPP-2) of the Dome Building area (aerial), which with Husaker's direction, writer marked the direction the suspect traveled. Also marked on this photograph was the first location where Husaker observed both male subjects standing near each other. Also depicted in this photograph was the approximate location and direction of travel of the person believed to be Michael Francke. Husaker's location and point of view is also depicted in this photograph.

Refer to attached signed statement by Husaker for complete details of the interview.

CASE STATUS: Investigation continuing.

:ct
01-31-89

003817

E. R. -1312

(1329 of 1431)

0045

HUSAKER, BETH EL WAYNE WMA DOB 01-25-45
730 Market Street NE
Salem, OR 97301 Home Phone: 370-7329
Bus. Phone: 378-2276
Employed: Oregon State Hospital (Custodian)

On 01-19-89 at 2:50 PM, Detective Kenneth Pecyna contacted Bethel Wayne Husaker at the Salem State Police patrol office. Bethel Wayne Husaker gave the below statement, in Det. Pecyna's notebook, regarding the investigation into the death of James Michael Francke.

"I have worked at the Oregon State Hospital since February 18, 1988. I am a custodian. I work out of the housekeeping office, located in the basement of the Dome Building. This office is located at the northwest corner of the building. I normally work from 11:00 AM to 7:30 PM, Monday through Friday. I came to work at 11:00 AM on Tuesday, January 17, 1989. After our third break on Tuesday, around 5:45 PM, Jim Haskins (unknown spelling of last name), a fill-in supervisor, told me I could go home at 7:00 PM. When it was time to quit, I went back to the housekeeping room, put up my keys, and picked up my things. I looked up at the clock and it read 6:58 PM. I had to leave the housekeeping room and go into the tunnel to get to the exit that leads to the ground level outside the north side of the Dome Building. I traveled up the steps and walked over on the sidewalk, then turned right (north), and was walking toward my car which was in the third row from the west on the north parking lot of the Mental Health Building, #33. I continued to walk north and was just past the disabled ramp railing and about the center of the west face of the building, #33. At this point, I heard what I would describe as a 'surprise hurt' sound. It was fairly loud, but it didn't last long (Ah!). When I heard this sound, I turned around to my left in the direction of the sound, which was toward the north end of the parking lot in front of the Dome Building. When I turned around, I saw both males facing each other, about two feet apart. They both turned around in opposite directions. One guy went quickly toward the Dome Building. This person wasn't running, but was moving fast like he was late to an appointment. I could observe him traveling across grass as far as I could tell, toward the Dome Building. It looked like he was going up the front steps. I hadn't realized there were other sets of stairs in front of the Dome Building and I just thought he was going up the front steps. At first, I could see all of him, and then I could see the legs under the trees as he was walking. I recall the last point I saw this person was as he was going up the steps. I don't recall seeing where the guy's hands were or what they were doing. He was a white male, about 5'11, 175 pounds, with brown hair. He had short hair. I'm not sure how dark his coat was, but it was a lot darker than the other guy's. I'm not sure, but it appeared he was wearing a trench type coat. The pants could have been light colored, but I'm not sure. I don't recall the shoe type or color. I didn't see the person stumble at all. I don't recall seeing any cars in this area. The other guy that was running west, away

003858

E. R. -1313

0046

HUSAKER, BENJEL WAYNE WMA DOB 01-25-45
Page 2 (01-19-89)

from the Dome Building, was a white male, late 20's to early 40's. He was six foot, six foot one inches (6' - 6'1") tall. He was about 175 to 180 pounds. He wasn't stocky. He was medium build. His hair was dark brown or black. It was short hair, cut above the ears. I could see this guy had turned around and was running as fast as he could. I could see his arms pumping. I could not tell if he was holding anything or not. This guy was clean shaven. He could have had a mustache, but I don't recall one. He was wearing a knee length trench coat. It was beige in color. The pants he was wearing were darker than the coat, so I could tell that the length of the coat was about to his knees. As fast as he was running, I couldn't see the coat flapping back. He might have had it buttoned in front some. I couldn't tell what type or color of shoes he had. I don't recall hearing footsteps on the guy running, and I think if he was wearing boots I would have heard him. I couldn't see any white on his feet, so I don't think he was wearing tennis shoes. When he approached the street, he slowed down and kind of galloped across the street. It appeared he couldn't tell which way he was going to go. I do know he never looked back. When he was across the street, he walked the rest of the time I saw him. He walked on the north side of the green generators on the building across the street. This is the building with all the construction going on. He disappeared when he was past the generator. He was out of sight, just a few seconds, and then reappeared near the dumpster area and headed west. He seemed to be just strolling at this point. I walked over to my car and then stood by my door for about 30 seconds and didn't see him anymore. I then got in my car and drove down the west entrance and stopped by the street. I stopped for about 30 seconds, and didn't see anything, so I left turning north (right), toward D Street. At D Street, I turned west and drove down to ttage Street and then went up to Market Street and went home. I have never met Mr. Francke."

"This statement is true. It was given by me freely, without threat or promise."

/S/ B. Wayne Husaker Dated: 1-19-89

01/19/89

Index

- A. Location where Husaker works.
- B. Location where Husaker is walking and first hears "surprise hurt" sound.
- C. Location where Husaker first observed two males standing facing each other and then immediately turning and going in opposite directions.
- D. Location of deceased body of James Michael Francke.
- E. Location where Husaker parked his own car.
- F. = the path of one male

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observed two white males two feet apart facing each other. The two men then turned away from each other. One male, wearing dark clothing, walked quickly toward the Dome Building. He lost sight of the man wearing dark clothing because he believed the man would receive assistance in the Dome Building and Husaker was not aware that the man was seriously injured. Husaker directed his attention to the other male who was running west away from the Dome Building. This other male was a white male, late 20's to early 40's in age; approximately 6'0" tall, 175 to 180 pounds; with a medium build; and dark brown or black hair. The running male's hair was short because Husaker could see the man's ears. The running man was clean shaven but could have had a mustache. The running man was wearing a beige, trench-type coat with dark pants.

I have attached a map of the grounds located at 2575 Center Street, Salem to illustrate the statement of Mr. Husaker. The map is attached as exhibit A and by this reference incorporated herein.

On January 19, 1989, Detective Dennis Fox conducted a polygraph examination of Bethel Wayne Husaker in reference to his statement regarding the observation of two males running from each other around 7:00 p.m. on January 17, 1989, in front of the Dome Building. Detective Dennis Fox told me that his examination showed Husaker to be truthful. Detective Fox also told me he asked Husaker if he had killed James Michael Francke and Husaker's reply was "no." Detective Fox told me that Husaker's response was truthful on this question. Detective Fox told me he is a State licensed polygraph examiner who has conducted over 4,000 examinations since 1975 and has testified in Oregon courts numerous times.

Information Report
Follow-up Investigation - Francke, James Michael
Page 2

ACTION TAKEN:

On 09-12-89 at approximately 10:30AM I contacted Laura Kessler at her office in the Mental Health Building #33. During a canvas of that building Ms. Kessler related that about one week after Mr. Francke's death a light brown Plymouth Valiant bearing Oregon license PFK224, operated by a lone, white male adult approximately 30 years old with long, shaggy brown hair, followed her from either Center Street or "D" Street into the northwest parking lot of Building #33. The vehicle parked several spaces from Ms. Kessler's vehicle. The driver appeared to scoop down lower in his seat. Ms. Kessler waited for about two minutes while watching the subject then she entered Building #33 and contacted a fellow employee. Together they returned to the parking lot and found the vehicle unoccupied.

Ms. Kessler also identified the photo of Burgess as being a subject that looked familiar, but she stated that he might be one of the subjects from the Drug and Alcohol Treatment program that sells sandwiches in the area.

At approximately 10:55AM, on 09-12-89, I located the mentioned vehicle in the north parking lot of Building #33. Found it to be occupied by the registered owner, Bethel Wayne Hunsaker, previously identified as a custodian employed by the Housekeeping Department of the Mental Health Division. Mr. Hunsaker stated he has owned that vehicle for approximately two years.

It was noted that from the time that I identified myself as a detective with the Oregon State Police Mr. Hunsaker was visibly uncomfortable and somewhat hostile regarding being contacted. Mr. Hunsaker was visibly upset at being contacted as a result of his vehicle being the subject of a follow-up investigation involving a report by a fellow Mental Health Division employee. Mr. Hunsaker stated that he had been in contact with KOIN TV, Shawn Penn, and the Francke family, and that he was becoming irritated by the prospect of any further contact regarding this Francke homicide.

Due to Mr. Hunsaker's obvious discomfort I discontinued the contact and no further action on this lead is anticipated.

CASE STATUS:

Continued.

0004173

OREGON STATE POLICE
POLYGRAPH EXAMINATION

TO: Mr. Emil E. Brandaw

Regarding: MURDER INVESTIGATION (VICTIM: FRANCKE, JAMES MICHAEL-DOB: 10/02/46)

Examination requested by: OREGON STATE POLICE SALEM-DETECTIVE KEN PECYNA

Examination conducted at: OREGON STATE POLICE DISTRICT II HEADQUARTERS Date: 01/19/89

Name: HUNSAKER, BETHEL WAYNE Address: 730 MARKET STREET NE, SALEM, OREGON

SS# 557-16-4589 DOB: 01/25/45 POB: INDIANA Sex: M Race: W

Ht: 5 11-1/2" Wt: 164 Hair: GREY Eyes: BLUE

Married: MARRIED Name of Spouse: REBECCA GAY

Occ: CUTODIAN Employer: OREGON STATE HOSPITAL

Medical History: STATES OK AT PRESENT TIME

Education:

Criminal History: CCH REFLECTS: DUII/ASSAULT (DISMISSED)/DISORDERLY CONDUCT (DISMISSED)

REFER: To Oregon State Police #89-00672 and #89-016.

ISSUE: On Tuesday, January 17, 1989, the body of Corrections Division Director, James Michael Francke, was discovered on the grounds of the Oregon State Hospital by the Corrections Division Administrative Offices. Bethel Wayne Hunsaker, an employee at the State Hospital, provided information to the Oregon State Police that he observed at approximately 7:00 p.m. on Tuesday, January 17th, two individuals that apparently had an altercation near the area where Mr. Francke's body was discovered.

As part of the investigative procedure, a determination was requested as to whether or not Bethel Hunsaker was being truthful in his statements regarding this matter.

PRE-TEST
INTERVIEW:

Bethel Wayne Hunsaker contacted this examiner at the Oregon State Police Office in Salem. At this time Bethel Hunsaker was advised of his rights from the prepared form which he stated he completely understood. Bethel Hunsaker did participate in all necessary aspects of the polygraph procedure.

Bethel Hunsaker stated in substance that on Tuesday, January 17th, at 6:58 p.m., he was preparing to leave the housekeeper's area in the Dome Building, secured his keys, and

0007171

POLYGRAPH EXAMINATION
PAGE TWO

walked up a flight of steps to the outside. He said while walking away from the Dome Building he heard what he describes as a "pain yell," and observed an individual in a dark trench type coat, hurriedly walking toward the Dome Building from the parking area. He said at the same time, he saw another individual who appeared to be a white male with a knee length lighter colored trench coat and pants, running as fast as he could across the lawn area, away from the parking area. Mr. Hunsaker told this examiner that he could not provide an absolute positive description of the person as far as facial features or anything like that went. He said he simply can say that the person was a white male, with fairly short hair because he could see the person's ears, and again described the coat that the person was wearing. Mr. Hunsaker said that he could not recall any other pertinent information that he felt could be valuable at this time.

INSTRUMENTATION:

Bethel Wayne Hunsaker was examined on a five channel polygraph.

RELEVANT
QUESTIONS:

The following are the list of relevant questions used during this polygraph examination:

1. At about 7:00 p.m., Tuesday, did you see someone in a dark coat hurrying toward the Dome Building?
Yes
2. At about 7:00 p.m., Tuesday, did you hear someone pain yell?
Yes
3. Tuesday night about 7:00, did you see a white male running from the parking area near the Dome Building?
Yes
4. Do you know who killed Francke?
No

The following are the list of questions used during the Zone Comparison Examination:

1. Did you kill Francke?
No
2. Did you stab Francke?
No

0007172

POLYGRAPH EXAMINATION
PAGE THREE

RESULTS &

CONCLUSIONS: Results of the polygraph examination for both the General Series Examination and Zone of Comparison Examination reflect that Mr. Hunsaker is being truthful in his statements regarding this matter.

ADDITIONAL

INFORMATION: Refer to Detective Pecyna's report for additional details concerning the routes taken by the person running from the parking lot area, and other physical descriptions of that individual.

642-20 Dennis R. Fox, Detective
District II Polygraph Examiner

DRF:lbd

c: Oregon State Police - Salem
Marion County District Attorney

Tape received and typed January 20, 1989

0007173

HUNSAKER, BETHEL WAYNE
TEST: 01-19-89

QUESTIONS

At the State Hospital, have you ever done anything you don't want your boss to find out about? No.

Have you ever done something to get back at someone? No.

At the State Hospital, have you ever done anything that you don't want your boss to know about? No.

Except while drinking, have you ever broken any law? No.

0007174

CASE NUMBER #8900672		SPO Evidence Case #89-016		INFORMA JN REPORT DEPARTMENT OF STATE POLICE SALEM, OREGON 97310		DISTRIBUTION <input checked="" type="checkbox"/> Gen. Hdq. <input type="checkbox"/> Arson <input type="checkbox"/> Document <input checked="" type="checkbox"/> Dist. Hdq. <input type="checkbox"/> Narcotic <input type="checkbox"/> Ident. <input type="checkbox"/> Crime Lab <input checked="" type="checkbox"/> Other <u>Marion County D.A.</u>	
AGENCY OREGON STATE POLICE - Salem							
1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Ctr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution—Complainant <input type="checkbox"/> No Prosecution—Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER			
Original Report Date 01-18-89, Wednesday	5. Time 12:48 AM	6. Written By Kenneth P. Pecyna, Detective		7. This Report — Date 07-13-89	8. Time 11:05 AM	9. County Marion	
10. Victim or Complainant FRANCKE, JAMES MICHAEL		11. Residence Address 21058 Hazelnut Ridge Rd., Scotts Mills, OR		12. Res. Phone	13. Sex M	14. Race W	15. D.O.B. 10-02-46
16. Subject of This Report ADDITIONAL INFORMATION / WITNESS ROUTE TIMING						17. Total Value of Recovered Prop. (Itemize Below)	

3. Details: (Use Additional Plain Sheets as Necessary)

REFER: To all reports bearing GHQ Case #8900672.

NARRATIVE: On 01-18-89 at 12:48 AM, security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

MENTIONED FOR DATA ENTRY: HUSAKER, BETHEL WAYNE WMA DOB 01-25-45
 (Previously identified)
 Employed: O.S.H. Custodian

MENTIONED OTHERS: KING, DEBBIE, Detective
 Marion County Sheriff's Office

EXHIBITS: One (1) roll 35 mm film.

ACTION TAKEN: On 01-30-89, writer and Det. King contacted Bethel Wayne Husaker at his basement office of the Dome Building. He agreed to reinact the same thing he did on the evening of 01-17-89, as he left his office to go home. Below is the listed times, with location and/or activity on 01-30-89, as it relates to the times he described on 01-17-89.

<u>01-30-89</u>	<u>Activity</u>	<u>01-17-89</u>	
3:22:00	Office, looked at clock	6:58:00	Office, looked at clock
3:23:45	When heard "surprise" sound	6:59:45	When heard "surprise sound"
3:26:06	His car	7:02:06	His car

Photographs were taken of Husaker's tennis shoes by Det. King. These shoes, he advised, are the same ones he wore on 01-17-89.

There is no further information at this time.

Reporting Officer(s) <u>Kenneth P. Pecyna</u> Kenneth P. Pecyna, Detective		Off. I.D. Number 1293-21	CASE STATUS: Investigation continuing 3810 KPP:ct 07-17-89	
Other Agencies Notified	Date	Time	Method	APB Numbers and Dates
			Approved By <u>117</u>	Date <u>1-25</u>

HUSAKER, BETHEL WAYNE WMA DOB 01-25-45
730 Market Street NE
Salem, OR 97301 Home Phone: 370-7329
Bus. Phone: 378-2276
Employed: Oregon State Hospital (Custodian)

On 01-18-89 at 11:20 AM, Detective Kenneth Pecyna contacted Bethel Wayne Husaker in front of the Corrections Division Dome Building. Bethel Wayne Husaker gave the below statement in Det. Pecyna's notebook regarding the investigation into the death of Michael Francke.

"I went to work yesterday at 11:00 AM. (1-17-89) I was in the housekeeping office downstairs in the Dome Building. This is where the lower windows are on the northwest side of the Dome Building. I was leaving the room to go home, so I was going up the steps that lead from the bottom housekeeping room to the top. I was walking toward the parking lot on the north side of the Mental Health Administration Building. I was about half-way to the parking lot when I heard someone yell. I didn't notice any cars in the Dome Building parking area. I wasn't paying attention, though. I noticed in the parking lot where I was parked that there was four or five cars. I don't recall any descriptions on the cars. The yell was like someone was hurt, but there was no words. I turned around in the direction of the yell, which was back over to the east of the center of the center island in the Dome Building parking lot. One white male was running toward the Dome Building. He was wearing what appeared to be a darker trench coat. Both guys had shorter hair. The person running toward the front of the Dome Building had went out of sight and I thought he went inside. The other guy running west ran over toward the building, west of the Dome Building. He was a white male, short hair. I could tell it was shorter hair because I could see the ears. The trench coat was a lighter colored, maybe beige, and was down to just above his knees. It was a trench coat. He went out of sight by the green generator over by the building across the street. I could tell his pants were dark. I know the time was about 7:00 PM yesterday, because my boss let me get off at that time. I normally get off at 7:30 PM. I didn't hear any gunshots or anything. All I heard was the yell. The one guy running west was running at full speed. I waited by my car to see if I could see the guy running west to reappear and I didn't. The other guy, I figured, had gone for help. If I would have seen the other guy fall or something I would have checked further."

"This statement is true. It was given by me freely, without threat or promise."

/S/ B. Wayne Husaker

003853

003853

CASE NUMBER #8900672		Case #89-016		<h2 style="margin:0;">INFORMATION REPORT</h2> <h3 style="margin:0;">DEPARTMENT OF STATE POLICE</h3> <h3 style="margin:0;">SALEM, OREGON 97310</h3>		DISTRIBUTION <input checked="" type="checkbox"/> Gen. Hdq. <input type="checkbox"/> Arson <input type="checkbox"/> Document <input checked="" type="checkbox"/> Dist. Hdq. <input type="checkbox"/> Narcotic <input type="checkbox"/> Ident. <input type="checkbox"/> Crime Lab <input checked="" type="checkbox"/> Other <u>Marion County D.A.</u>	
AGENCY OREGON STATE POLICE - Salem		1. TYPE OF REPORT <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Information <input type="checkbox"/> Clearance		2. CASE STATUS <input type="checkbox"/> Clr. by Arrest <input type="checkbox"/> Unfounded <input type="checkbox"/> No Prosecution—Complainant <input type="checkbox"/> No Prosecution—Dist. Atty. <input checked="" type="checkbox"/> Pending		3. ORIGINAL SUBJECT OF THIS REPORT MURDER	
4. Original Report Date 01-18-89, Wednesday	5. Time 12:48 AM	6. Written By Kenneth P. Pecyna, Detective	7. This Report — Date 08-13-89	B. Time 4:00 PM	9. County Marion		
10. Victim or Complainant FRANCHE, JAMES MICHAEL		11. Residence Address 21058 Hazelnut Ridge Rd, Scotts Mills, OR		12. Res. Phone	13. Sex M	14. Race W	15. D.O.B. 10-02-46
16. Subject of This Report ADDITIONAL INFORMATION				17. Total Value of Recovered Prop. (Itemize Below)			

18. Details: (Use Additional Plain Sheets as Necessary)

REFER: To all reports bearing GHQ Case #8900672.

NARRATIVE: On 01-18-89 at 12:48 AM, security personnel from the Oregon State Hospital found the body of Mr. Francke in front of the Department of Corrections Dome Building on Center Street in Salem. An investigation into the death of Mr. Francke was subsequently initiated shortly after being reported.

MENTIONED FOR DATA ENTRY: *HUNSAKER, BETHEL WAYNE WMA DOB 01-25-45 (Previous report spelled HUSAKER) *ATTENTION: Spelling correction: HUNSAKER, not HUSAKER (Previously identified)

ACTION TAKEN: On 08-09-89 at 2:00 PM, writer interviewed Bethel Wayne Hunsaker at the Salem patrol office. A signed statement was obtained in writer's notebook, of which a typed copy is attached to this report. During this contact, writer learned that in previous reports his name had been misspelled.

Writer allowed Hunsaker to read his statement made on 01-18-89, and also on 01-19-89.

Hunsaker noted that in his statement on 01-18-89, he advised that the person he saw going toward the Dome building was "running". He advised that the statement he made on 01-19-89, where he stated, "this person wasn't running, but was moving fast like he was late to an appointment" best describes what he saw on 01-17-89 at around 7:00 PM. Hunsaker also advised that the height he described in his earlier statements were just estimates and that he really was not paying attention to the height of the two people. (Refer to attached statement by Hunsaker for complete details).

On the same date at 5:05 PM, writer again contacted Hunsaker. This time he was contacted at the Oregon State Hospital outside the Communications Center. He was shown two photographs of composite drawings. One was that of a man in a pin-striped suit who was observed around 6:30 PM in the Dome Building (refer to Master Evidence List #343) and the other of a subject observed in the parking lot of the Dome Building at around 5:30 PM (refer to Master Evidence List #342.) Hunsaker advised that he doesn't recall ever seeing the second composite.

Reporting Officer(s) Kenneth P. Pecyna, Detective		Off. I.D. Number 1293-21			
Other Agencies Notified	Date	Time	Method	APB Numbers and Dates	Approved By KD
					Date 8-29-89

E. R.-1324

MURDER GHQ #8900672
VICTIM: FRANCKE, JAMES MICHAEL
Page 2

ACTION TAKEN: Hunsaker advised that in regards to the composite of the man in the pin-striped suit, he feels the head
(Continued) size appears familiar and the hair above the ears, along with a clean appearance "catches his attention"
in regards to the man he saw running west, away from the Dome Building on 01-17-89. Hunsaker also advised
writer that this same person turned around to his right and then ran west. Hunsaker also advised writer
that he remembers this person was wearing a trench coat which was just above the knees.

There is no further information at this time.

ACTION REQUESTED: Request previous reports regarding HUNSAKER, BETHEL WAYNE be corrected regarding the spelling of his name.

CASE STATUS: Investigation continuing.

KPP:ct
08-14-89

003855

E. R.-1325

HUNSAKER, BETHEL WAYNE WMA DOB 01-25-45
(Previously identified)

On 08-09-89 at 2:00 PM, Detective Kenneth Pecyna contacted Bethel Wayne Hunsaker at the Salem State Police patrol office. Mr. Hunsaker was interviewed and a signed statement was obtained, in Det. Pecyna's notebook, regarding the investigation into the murder of James Michael Francke.

"I have read both the statements I gave on 01-18-89 and on 01-19-89 and would say that the statement I gave on 01-19-89 is the most accurate and fits what I remember seeing on 01-17-89. A point I would like to make clear is that the height of both people I saw were just estimates. I really was not paying attention to their height. The person running west, away from the Dome Building, could have looked back while I had my attention on the other person. I cannot say that he looked back because I did not see him look back during the time I saw him. I could not determine what nationality the person running west was. I could not say he was a Caucasian or a Mexican. I do think he was just a white male. This person ran like a man. The two men were just facing each other when I saw them."

"This statement is true and accurate to the best of my knowledge",

/S/ B. Wayne Hunsaker Dated: 08-09-89

073850

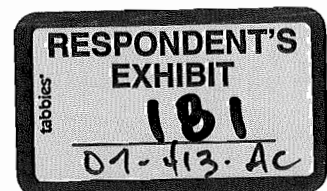
E. R.-1326

Frank Gable deposition

p. 19

*Q. What if the investigator reports indic
you told them no names? would th
reports be wrong?*

*Q. Mr. Gable, how come you can remember
all these names now, but you couldn't
remember them prior to your trial?
How come you can remember Goss, An
Maire Hansen and Robert and your
neighbors?*



TF 6/10

*

002973 Amadeo Garza said " That Frank and Janyne had a butcher block in the kitchen that had a number of kitchen knives in it and that he had removed some of those knives from the butcher block."

003272 Micky Goss I may have been with Frank on the evening of the 17th at his apt.

003497 Rence Hahn 1-18-63

Albany Ore.

She remembers that Mike and Frank talked and Frank mentioned a mutual friend of both of them was in hosp.

006080 Wilma & James Weaver I.D. John Crouse as person
1542 clay st N.E. running from dome bldg.
Salem 362-7034
581-8667

001970 He further added that he started thinking about confessing as he had heard about murder on T.V. and figured that he could make up enough to go along with what he heard on T.V. about homicide

000795 I explained to Bickell that sometimes citizens in an effort to be helpful to the police dept. investigating serious crimes have a tendency to exaggerate certain facts that they might be aware of.

005889 Janyne says ~~he~~ "He kept telling me I should remain
because of the people that were involved.
referring to: Mark, Kevin, Robert, Micky, (Scott and wife Donda)

005362 Jan 17, 1989 2:33 p.m. call from our phone to
Mike Sims

check Kevin's home ph. and work ph. calls to my home

005944 Call Kevin 5:38 talks 5 minutes 5:44 p.m.

* Tim Dede's Salem Cop give me \$60 so why would I then
drop a dime on Mark Gesner. Feb 8th

006017 { ① I want this added to my issues in post. cc
006018 { ② Also Judge West an issue in post. con
Dr. John Cochran, Profile on Curtis Grecco
"Person who has a lot of guilt about crime
and secretly wants to be caught."

0022805 Sept, 21, 1989 Brief with Dr. Cochran at state
police office

re: John Crouse

Frank Gable.

0061393 Medical Treatment record showing dates I
was at medical.

Used by state police to see if I was around
the dome blq.

People who Confessed

1. Samuel Gernejo
2. Steven Eirecco
3. Neriman Crestao
4. John Zahos
5. James Benford (sp??)
6. Tyrone McDougal
7. Peg Gorden / Jeff Gorden
8. Ernest Watson
9. Jonathan Schrack
10. Doug Scritchfield
11. John Crouse
12. Gordon Shaw

People who admitted to lying
re: Frank Gable

1. John Bender
2. Kelly Bender
3. Kevin Dockins
4. Jodie Swearingen
5. Randy Studer
6. Richard Kenietz
7. Rachel Shaver
8. Kevin Walker
9. Joe Brachtl
10. Gayla Freeman
11. Michael Keckins
12. Chris Warla
13. Bill Storin
14. Dennis Gause
15. Tommy Arnold
16. Francis Jones
17. Richard Wilcox
18. Ed Dockin
19. Verna Jo Hensley

Total = 31

E. R-1331
Defense of the Accused
002338 002380

p.1

2342 Jodie calls Dan Anderson Jan. 17, 1989 8:55 p.m.
from Bender house.

2344 Jodie says she leaves Dundee it was getting
dark. Gets ride with man in Red Jeep pickup
guys friend was Annette^{GP??}

2345 Jodie says Dad gets off around 5:30 p.m.

2347 Jodie states hitchhiked guy gave her ride mayb
named Steve??

2350 I met Frank Summer 89.

2351 Jodie states night of murder she got ride from
man in pickup truck to Salem 20-30 minutes aft
her dad got home from work

02367 Jodie states left Dundee after it got dark. Dad can
verify that.
Dad gave her few bucks (see Dad statement,
025248)

02377 Q why would you say about the dome light coming
A- because I read the bullshit in the news paper.

E. R.-1332

mark Gesner

Before we go after Mark hard, lets lock him into the drug deal.

1. You say the first time you met Frank, Kevin Walker to you over to Frank's house?
2. Once you arrived there and went in, is it true Kevin introduce you to Frank and the other person was Robert Corrnett?
3. Is it true that after Earl came back from Reno, you took Earl over to Frank's house and introduce Earl to Frank, and in fact Frank sold some Dilaudids for Earl?

P.1

Mark Gasner Trial testimony Sarah M

7974 7 met me June or July of 1988 went to
7975 my house with Kevin Walker introduced,
to him.

* Here mark Gasner tells of the real drug
deal that really happened Jan 17th 1989.

Abel should of proved I didn't know him, by
my testimony and the fact I didn't use speed
until late Oct.

Ask Gasner: isn't it true that the first time
you went to Frank's house was ~~at~~ with Kevin Walk
and Robert Cornett was there and then you left
to go over to Cross st.?

7975 asked why he didn't do drug deal at m,
house.

A. I didn't feel comfortable with how
many people were at the residence.

Micky Goss, Janyne, myself, Kevin, Mark, Rob
Lamont brought Robert.

See Kevin Walker recant

Also Mark admits to drug deal and leaving going
to Chris' with Robert. Abel should of used Alibi
discovery to prove that was night of 17th 1989.

003232 Gesner. ' I first met Frank Gable in the fall or winter of 88" I was introduce to him by Kevin Walker, Frank told him he knew someone who would by meth from me.

003232 Frank gave my wife white leather boots.

I got those boots from Verna Jo who run a stolen visa card. again after raid!

Mark Gesner

003229 Gable came over to his residence at 3pm. to 4pm. on 1-17-89 was in possession of stolen goods claimed to have ripped off in Portland. Yet Hardin says I supposed to be at Bender's 4:5pm. also he phone records 2:33pm, 4:23pm 5:38pm

002936 Chris Warila arranged on 2-2-89

This is the first trip Chris and I made to Portland. I called Janyne at work from court house phone using our calling card #

003230 Gesner says I brought a bag to him and told him to get rid of it for me. It was unusual for Frank to leave in such a hurry, but I figured the it was a bag containing sledge or some by product from a met lab operation. Frank has dump it in the past.

If it was by product from met lab and I'd drop it off before.

then why would I be doing car clouts? ^{??}
ha!ha!

003230 Gesner stated he did not know Mike Franke, but knew Janyne worked near the "Dome blg."

How does a common hoodrat know its called "Dome blg."??

Walker Trans.

p. 2

8179 Walker tells of ex-con in possession of
firearm and menacing.

Kevin pulled a gun on a guy who cut him
off in traffic. yet does nothing about someone
who supposedly ~~then~~ threatened his life and
his family.

~~8181-19 "I got out on October 31st"~~

8183 D.A.'s office write judge in Benton Co. and Moore
19-20 writes parole board and judge.

8183 D.A.'s office agree not to prosecute you for
~~12-14~~ any non-person type crimes

8183 Because my concern was the concern Frank
24- ~~x~~ had already been charged with Federal firearms cha
8184-2 And did we agree not to do that. Yes! you c.

8193 Abel, ask him about fed gun charge being dropped
13-20 Kevin never had a gun charge Federal
show he didn't know the discovery or case and
asked ~~the~~ stupid questions.

8194 * Have you broke into cars and burglarize houses
↑ Nope!

8181 Two burg. I's excon in poss. Forgery I
9-16 poss. of controlled sub.

Abel never went on to question about his
two burg. convictions.

E. R. - 1337

005-44 Call Kevin 5 8 talk 5 min 5:4
micky Go. 3 living there.

Kevin Walker

p. 1

Trial Transcripts.

8155 met me April, May or June of 1988.
9-10 I never met Kevin til Oct or close to
Nov. I didn't get out of prison til June

8157-10: Do you ^{know} Earl Childers
"Not personally no."

→ Not true at all he knew Earl well from Mark's
and from after I met Earl in ~~Feb. 1988~~ ^{Feb. 1989 or 90}. Earl
was often around and knew Kevin well.

8159 8-10 says he came to drop off car at Russ house
and I came out and thats how I introduced
Frank and Mark

→ Not true it was the night of the drug deal.

8159 say he introduced Mark to me in Sept. Oct. 88.
16-17 not true

8165 Kevin's talking about us talking on phone, phone
records reflect 5:50 p.m. he called me. And I believe I
called him

8167 Kevin tells of hearing the stuff go down over
by the state Hospital grounds said he sees cop cars

* In my interview I tell cops that Kevin had stop
by my house around 2:30 or so in the morning and
had told me about what he heard on scanner!

p. 1

Earl Childers ~~WESTMORE~~
Barbara Moore

1. When you first met Frank is it true that you went over to Frank's house and that Mark Gessner introduced you to Frank?

2. When you first came to Frank's with Mark Gessner you wanted to sell or trade some pills and in fact Frank sold some for you for \$200.00 in cash. Did you?

3. Did you also want to sell a camera?

4. Is it true that Pam Winn pawned your camera to Dan's Pawn shop along with her wedding ring?

5. On Sept. 20th 1989 you told the state police

002130

"Frank Gable never told me that he killed Francke"

002133

And again on Sept. 21st 1989 you again say,

"Gable did not tell me he killed Francke."

Where you telling the truth when you made these statements.

6. You stated on the afternoon of the 17th of January you return items you had stolen and received cash for the returned item. pg. 2

Earl Childers

7758-10-14 says he came back to Salem 15th or 16th Feb. "and is there a reason you remember that date?"

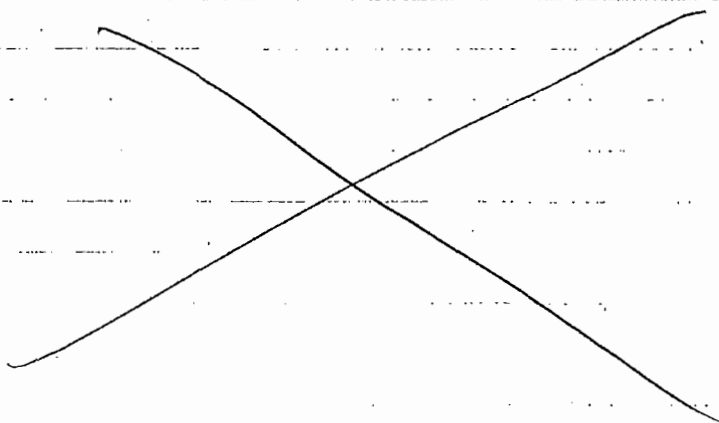
A. Yeah. My son's birthday is the 15th and I came back right after they had a party for him that night.

Abel should of proved Earl had lied by the records from Fred Meyer's Feb. 13th 002/24

Show police could of proved he was lying and yet used his story anyway.

7768. 10-11 He said the car was unlocked.
unlocked car vs. states time line and scenario

7776-7777 D.A's office put Earl up in motel in Oregon City, Then pay for his house rent and depos. also paid his medical bills "pretty good sized bill" Sarah Moore present at parole board.



Earl Childer Trial testimony Sarah Mo

7745 - 25 Mark took me to Frank's house
sold dilaudids for me.

Paul's girlfriend drawing money from Bank. For date I met Earl.

7747 11-18 Hyacinth house went there w/ Fr
January February

7750 21-24 I would shoplift something and
try to exchange it for money

see discovery 002124. Police check Fred Meyer's
security Mike Feldman. Only record of Earl trying
to return something garage door opener. Feb. 13, 1988

Earl said on 17th He went to Lancaster mall, shop
and returned items for refund.

7755 28 I waived and yelled and whistled at h

7756 1 He just continued on going.

Abel should of had Earl demonstrate how
he waived, yelled and whistled. Also should of called people
house along "D" st. 56' from 23rd Earl says he was!

7757 24-25 Q. At some point in time did you leave
and go to Reno after this occurred in January?

A. Yes, I did.

see discovery 002124. Earl tried to return item Feb.

I met Earl after he got back from Reno !!
and did not know him until sometime mid-Feb.

P. 2

Abel's interview

pg. 44-45 (Talking about Thomas Denny) Dept. of Justice or FBI agent worked on Francke case i.e. Johnny Crouse. The one Abel tried to call to testify about Johnny Crouse. Believes J.C. did killing.

pg. 53 ⑥ Preparation with Gable and yourself where you played, you know prosecutor with him. ⑥ YES.

→

Not at all true. He never once did anything like that.

P. 1

Abel's interview

pg. 11 (Speaking about investigators) ^Q Do you also lines know all their names? ^A "I know some,"
6-10

pg. 18 Says Karen came in every night during trial from 6pm. til closing time.
→ Not true, pull records!

pg. 26 Never did we ever jog his memory.

→ That's a lie! Why then did I have Bruce C. check the hospital, the parking ticket, Gordon Martin and Wayan Knapper, the eviction notice

pg. 32 I'm the lead-the counsel and I've got to say when-- when enough's, enough.

pg. 37 Bribery if the district attorney says "I can save you five years in prison if you'll sing our song"

→ They made me lots of offers to make up a story.

pg. 39 referring to Natividad's car! I never even knew what kind of car.

pg. 40 Abel's says Liz recanted. That Kevin F. called me up and says, she won't testify and Charley Burt said, Don't bother her ever
Talk to Burt about again
this

A.7

003535 Q Since that time have you seen F.G.?

A No, I have not.

Yet both he and I in discovery say we
seen each other at 16th and cross at John's
house. Plus at Shelly Thomas's house
at John's he was with Chris, say I was gett
a beer out of Bridgwater in July.

Its so clear Abel should of did a time lin.
as I told them to do!

~~003714~~

003714 Ruben Hernandez 8-12-62 advised that he spent
the night at Shorty's and did not leave.

This guy should of been talk to really indep
about Tim N. Jodie, shorty and their story.

E. R.-1344

A.6

003531 Q Towards the front or back of the car?

A Towards the front of the car.

Now Hardin knows that and can see directly of car.

003534³³ Harden says. Take ten minutes to drive from his house to dome bldg.

003540 Feb 5, 1990 interview Harden says " He observed that Gable was wearing a dark colored trench coat. around knee length.

Yet in 003526 Gable was wearing dark blue a sweat shirt.

↓

0000311 Penn says. " The second man identified as Francke's attacker was described as dark haired wearing a light colored coat extending below his waist.

0007141 Harden passes polygraph test when asked if knew I did crime. (Also 007144-007147)

0007147 Harden now threatened with being part of the elements if true, then Hardin would be party to aggravated murder.

p. 5

003530 Q Now was the stabbing. I'm demonstrating underhand like you'd pitch a softball or overhand or how was that?

A It was a straight stab.

Yet in court police demonstrated something totally different.

003530 F.G. struck him in the chest one time and he went down.

I could see the guy rolling off to the side Gable rolling him off again.

So if he went down, why then am I now supposed to be rolling him off? Plus I thought he said his view was blocked!?!?

003531 Q could you tell if he fell into the car or away from the car?

A I couldn't tell, the door was open and I assumed he fell toward

yet 352C He could tell what door because cars were parked on both side

ha! ha!

003531 Q How far away from car was Gable when you last saw him?

A Not five feet away running.

003524 A. six car lengths.

Then William Pierce tells him "okay"

Feeding and mold his story and letting him know when he is off their story line.

003528 Q How long after Jodic was in the car did y see the dome light come on and Frank Gabb get into the car?

A Not five minutes.

003528 Q Now when you say walking up to, how far away was the guy that (interrupted)

3529

A He was right at the car.

003529 Q Now you say a businessman from the way he was dressed?

A Yes, He was dressed quite nice

Franck wearing old boots, pants and dark trench coat.

003529 Hardin says Francke had trench coat or something over one of his half arms or something. I can't say for sure or not. view of that was blocked by the car.

see Cully, Eldridge and state hosp. patients no oti.

003527 Q But you saw Francke inside the car?

A yes, I did.

003519 okay, we know the the director of corrections
M.E. was murdered on Jan. 17, 1989 "in the
evening." see below
↓

003520 I arrived, it was evening time

003521 Q okay, did you guys have any conversation at
that time?

A. Not really, I just kind of gave her the routine
of about me picking her up late at night
like that.

003523 Q How far away was the car that the dome light
came on?

A. Approximately 100 yards, if that, it wasn't
far away at all.

Q Now when we pulled out there earlier today
I don't think that's 100 yards across there

A Maybe 50. I'm not sure it's hard to "guess"

003524 Q Let me ask you this, we're looking at a
photo right now which is a big 2' by 3' size

003514 Harden taken to Dome bldg. twice to look around (help mold his story.)

003540 Harden states Mike Francke walking from area of the "portico door."

How would anyone that's never been at the dome bldg. know to say "portico door"

003526 Q Could you tell from the photo which door is open to get into the car?

A. There were other cars there.

Q There were other cars there?

A. on both sides.

Q on both sides?

A. yes.

see discovery 002045 He (Caully) did not recall any other vehicles.

discovery 002583 Robey Eldridge. "About 6:30 p.m. when I left Peterson and I exit together, my car was parked besides Mike's on the left of vehicle.

No one was parked directly to the right of Mike's vehicle.

P. 1

Cappie "Shorty" Harden

003508 NOV. 20, 1989 Cappie stated that he need to see P. of Frank Gable before he could be sure whether he knew him.

"He remembers that Janet had moved out John & Kelly's place the first time Cappie met Frank Gable (after Jan. 20, 1989 dope raid by Salem P.D.)

003512 Jan. 18, 1990 interview Shorty stated, later in the day, near dark, she (Jodie) came to his residence at 658 Center. He gave her a ride to West St. where she spoke for a few minutes with Ron Bissonette, after, he drive her out to Bender house where he dropped her off.

X

003513 Harden stated, He was called to Dame blg. by Jodie.

see discovery 005727

X

Jodie interview on 1-12-90 tell Sarah Moore, Tom Bostwick,

"I made a phone call from the pay phone at Plaid Panty store located at 25th and sta at around 6:30 p.m.

X

003540 He now is certain Jodie had phoned him to come get her and it took him twenty to thirty minutes.

007140 Shorty says Jodie called and he went to General

P.3

002508 Kevin Dockin stated after the bust he John & ke took control of house.

Kevin advises that some undetermined time after the bust Frank came over early one morning.

003279 Peggy Gottfried

I was a drug user and frequented the Hyacinth house during January.

shown photo of Frank Gable ' I do not know Frank Gable.

see detailed report of info. on people she knew there, 003279.

015143 Louis Matthew Bogle 12-8-59

015145 Bogle states he worked on Van at Bender house, around time of murder, recalls seeing Jodie.

He does not recall seeing F.G. or seeing a vehicle matching that driven by F.G. at Bender address.

017314 Janet Marie Sanderson 2-17-59 Lived at Hyacinth st. house with Kris Key.

Doesn't know Frank Gable, Bender's lived down stairs when we lived there.

017364 Adam Hernandez 6-15-60 Does not know F.G. was not at hyacinth house

P.2

005285 Luis Ruiz shown photo of me and states he
did not know me.
stated "I never heard of Frank Gable!"

005089 Larry Pilgrim 8-14-54

seen Frank Gable after they got busted

003556 Frank Sam Harmon

He met Frank over at Bender place couple
of days after bust.

003558 Sam Harmon

The only time I saw Frank was right after
Chris Kay had move out
after the raid!

003718 Verna Jo Hensley 10-16-63

That on the late afternoon of 17th she was at
Hyacinth house with Robert Gregor (aka one arm Bob)

003719 Verna Jo Hensley "I met Frank Gable approximately
a week after the murder occurred.
again after raid!

002502 Kevin Dockin advised that Frank didn't hang
around the Hyacinth house until after the bust
starts to lie, then recants in some sentence!

E. R.-1352

Hya-nth house 3182 Hya-nth st.
by Dor. and behind 7-11 store, house tore
down long ago, empty lot I think.

July 27

P.1

20 people at Bender house, don't know F.G.

People who lived at or were there during r
on January 20, 1989

0001437 Chris Kay & Shannon Maden rented house
lived there months before raid

Janet Sander/Harmon sister of Frank "Sam" Harman

Frank Sam Harman 9-19-57

Luis Raul Ruiz 8-29-51 rented house lived there 3m
before raid

Louis Paul Garcia lived there

6

Salvador Estrada rented house

Bernardo Estrada lived there

Rueben Hernandez

Leann Cantero aka Leann Bottern

John & Kelly Bender lived in basement
took over house after raid and moved up stair.

Richard Villa

Jodie Swearingen

Kevin Dockins

Renatta Estrada

Abel should of talk to everyone of these people

E. R.-1353

E. R.-1354

p. 5

017415 John Bender says F.G. brought Chris Werle's

017420 Bender's given money 39.22, 20.78, 40.00

017424 after Bender's receive money, he changes story no
to knowing me before x-mas.

All those involved in raid on Hyacinth house
yet not one says they know anything about
M.F. murder or my name.

025171 Larry Pilgram, never seen F.G. and Shorty together
had ^{met F.G.} ~~met F.G.~~ in John & Kelly's bedroom upstairs

~~P. 4~~
P. 4

John Bender

001698 John and Kelly Bender are sure of the fact that they didn't meet Frank until after they had sole possession of Hyacinth house which occu. after the January 26, 1989 raid by Salem P.D.

0001700 John states that he first met Frank during big snow storm winter of 89

The snow storm was Feb. 1, 2 and 3rd!

0001704 Kelly says that she first met Frank at a circ store near where they lived about a week or two after the raid.

005070 Larry Pilgrim and John Bender steal ski's and Jodie say to police, shorty dropped her off at Bender house, she help take in ski's

Theft report 1-26-89 see 005070 —

003508 Nov. 29, 1989 Cappie stated that he needed to see photo of Frank Gable before he could be sure whether he knew him

"He remembers that Janet had moved out John & Kelly's place the first time Cappie met Frank Gable (after January 20th 1989 dope raid by Salem P.D.)

Danny Underhill
DOB 5-2-56

In Crouse reports Underhill in April says
a ~~man~~ man named Cappie was involved.

Ask Jodie, was there a state police
in the grand jury room while she
testified?

Where and when did you first meet
Frank?

When the cops allowed you to visit
with shorty at grand jury, what did
he tell you to say?

If the police would of never took you
to dome bldg. and show'd you circle
area did you know that's where it was

did police show you photo's first of
Frank's car so you'd know what are
look like once she got there,

When she left Dundee was her dad
home from work?

How did she go about putting her story
together? Was it by info. police feed'd
her. Have her explain that fully!

005722 Jodie says the time that elapsed between Frank leaving me by tree and person coming out was 5 to 7 minutes.

005727 Jodie interviewed on 1-12-90 tells Sarah Moore and Tom Bastwick "I made a phone call from the pay phone at Plaid Panty store located at 25th and State st. at around 6:30 p.m."

005914 Jodie says "I saw blood all over her boyfriend's hands"

005717 Jodie said "he didn't directly threaten her" at soccer field. Then we went to his apt. in Kaiz. and got high.

Says we all left, but then she returns to my apt. looking for me and gets arrested with Tim Mull

DOB ~~7-2-5~~ 11-5-67

SID # 7113691

001959 Police ask Buck B. if he know that a girl matching the description of Jodie being at the Penny Glickard residence located with a block of Park street.

Jodie Swearingen

July 99

000049 Jodie calls Dan Anderson from Hyacinth house.
0001515 information obtained from tolls obtained from
Hyacinth residence of Chris Kay 3182 Hyacinth.
call lasted 12 minutes.

Call placed at 8:55 p.m. Jan 17th 1989

003492 Jodie told Ann Marie Hagemann "her boyfriend
was involved."

Ann Marie Hagemann
Employed Hill Crest School
ph. 581-5493

005716 Jodie's story, she got dropped off by Shorty at
Bender house after leaving dome blq. "she help
carry in ski's

Salem P.D. report on theft 1-20-89

005721 Jodie tells police, Her and Shorty drive to Hyacinth
house, Frank was already there.
says "I started talking to him and he mentions
snitch paper."

"I go ask Shorty to front me dope"
"I then went back to Frank and said lets do it
we got into Frank's car and I had Frank give me
a hit. Then we drove to 23rd and walked to front
of dome blq. we walked past the car and then Fran
says stay here by tree.

E. R.-1359

9-73-117

Jodie

- 002349 I met Frank on 25th and Lee
"Yeah that's when I did meet him"
As I said, I had only see Jodie at Pat's
house. SEE my reports. They match perfectly!
- 002367 I didn't even leave Duntee until after it got
dark
my dad could verify that!
See report on Jodie's dad. He says he came
home for work and they had dinner and
he recalls just what they had, then Jodie
went to the store and never came back.
- 002377 'She saw the door open and she remembers the
dome light come-on"
I read the bullshit in the newspaper.

E.R.-1360

7-13-11

Jo He

002281 Guy who gave Jodie ride to Salem
Jodie says that the guy gave her a ride
into Salem to the Circle K on Portland rd.
and Hyacinth Hyacinth.

Guy said his girlfriend was Annette a
heroin addict/prostitute

met her through Jackie Kearns.

Why didn't they track this guy down!?

002282 Guy drove a "red Jeep" from Newberg. 0023

002274 met Frank Tony's on 25th and Lee

002284 Jodie names all those at Bender house on

002285 says John & Kelly lived down stairs

002286 Jodie says when she got there to Bender
house she called ex-boyfriend Dan Anders

Met Jodie 16th Trade,

002294 Jodie says the first time we ever met
and is just what I said ten years ago.

002295 Jodie says her and Shorty went back to
Bender house and picked up Shannon and
went back to ^{Shorty's} ~~Deane's~~ house.

Why wasn't this Shannon talk to??

002306 Jodie tells how she developed her story by
police letting her look at pictures and take
her there!

I wasn't stupid, I could figure it
out

002332 When asked about the ski's Jodie nails
the date! 18th or 19th it was the 19th

1. Paul & girlfriends bank statement to prove when I me Earl. questioning Mark, Earl, Janyne and Frank Gable as to that issue.
2. Janyne ordered to attend White Oaks drug treatment and parenting classes... never did! Yet still gets Jessica back to live with convict baby killer and molster.
3. Janyne lies to police in first statement, saying Frank G. left for So. Dak don't know where he is at.
4. John & Kelly called Frank Gable from circle K store. No phone at Bender's house when I first went there. When was phone cut off?
5. No electricity when I went to Bender house first time when was electricity cut off.
6. Able never attack car burg. issue. if Frank Gable is best car burg. (see police statements 015667-015674)

Knives Abel never challenged.

1. Abel failed to call Paul and girlfriend and ban. states to prove when I met Earl.

He could of used Mark Gesner and Janyne Vicki and Earl to talk about selling the pills.

2. Abel should of used Janyne's report to prove she lied about the knife

002973 Amado Garza said he ~~took~~ knives took knives from butcher block.

3. Janyne said in trial transcript Frank was not her.

Abel should of used phone records to prove she lying and all alibi information.

Plus discovery 022823 she says I come home at 4pm. Had been at Chris Warila's

Faults never had been to Chris' house until Feb 2, 19 trip to Portland. I made call from Portland to Janyne's work. Also Gayla Freeman ⁰¹⁷¹⁹⁵ Trip to Portland Chris had court hearing!

Trial she said slept afternoon quiet night her her and Jessica

022823 again she say 5-6 people could have stop Mickey or Earl Childers picked her up.

Also she says Scott + Anisa come up

Robert = Chris house.

Again see Alibi each person I mention!

E. R.-1363

Sept

8. Abel and Sterkel not providing the ex-procutor to prepare me for testifying leading me to believe I'd be able to testify all along.
9. All the time Janyne's statements changed as they talk to her. Time she says she got off work changed, who picked her up one time it's Earl, another it's just me, another it's Micky, Jessica and I.
10. At trial she said, she napped and had a quite evening and then went to bed, then said I came home 6:30 a.m., said I was at Chris' house. yet Abel's failure to use phone records from Portland and develop info. to prove I never run into Chris until the night of the 17th and did not go to his house until I drove him to court in Portland.

1. Abel's failure to prove knife issue, also knives in Shorty's property just like Janyne's Armando En
2. Abel's total failure to prove time line by use of phone records from my house, the plaid pantry and Bender house ph. toll. to Portland at 8:55 p.m.
3. Abel failed to call Sam Harmon or speak with all the people who actually rented the Bender house.
4. Investigators failure to ask the question I requested they ask important witnesses ie: Kenny Farrell, Sam Harmon, Gordon Martin, Wayne Knepper.
5. Failure to develop all the witnesses in, on, or around Dame blq. and houses along 10th and 23rd where Earl said he yelled, waved his arms and whistled.
6. Abel not using states reports on Janyne regarding here states mad at Frank, Mickey, to sick to work, to sick to babysit. Also Scott & Anise came up, Kevin Walker, Robert = Chris house.
7. Janyne lying about state hosp. keys one statement she say they were in her pocket and I could not get them, then tells, "Diane, Frank has the keys on the car ring"

P. 20

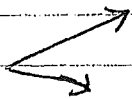
003153 F.A. I was not on hosp. grounds.
Just give us something solid.
What can I give you Fred? I don't know.
I was not on the hospital grounds!!

003154 what if I tell you that we had a person who
that you were seen running by the Dome bldg.

This is part of state I put two & two together
with photo of Jodie, when I said "the
little bitch is saying I was there"

003164 Friday December 22, 1989

Writer explained to Gable that he worked
through a list of names on the list.



In court Freda Ackem denied he'd shown me a
picture prior to this list of names, when in
fact it did happen on Nov. 3rd 1989

see discovery 003073 - 003093 - 003115 - 003116

In all these we talk about Jodie and he shows
photos of her.

003165 Here's list of names Jodie being #4

Cops ran record check on me & Dennis

003166 Then Gable changed that statement and said

003168 he may have seen Jodie for the first time
at 16th & trade st. cops ran record check on the

E. R.-1366

P. 22

020116 Kent Barker says here, he told me I looked li
composite.

Yet at trial he told jury, I told him
I look like composite.

019795 Jack Fenton at Gen. hosp. at 7:15 p.m. did not I.
either Jedic or myself by photos

Defense Reports

1. Frank 'Sam' Harmon Shorty's best friend
2. Verna Hensley
3. Richard Swain
4. William Storm
5. Brenda Linn
6. Jodie pg. 13 Where did you meet him (Frank G.)
'Um, I met him on 25th st. 25th and Lee

pg. 14. Okay. Uh, you were arrested at the Hyacinth residence on the 20th right?

'yep.'

Um, did you meet Frank before then?

"No!"

pg. 20 Did you see anybody kill him?

"No, I don't want to answer that."

pg. 25 Was allowed to meet with Shorty a few times.

7. B. Louis Bogle 015143-44 Never seen F.G.
at Bender house nor his car

Leann Battarn at Bender house during raid
never seen me there,

Francis B. Martineau neighbor lady, why wasn't
563-371-3460 she called?

Janyne ordered to White Oaks for drug evaluation
and ~~to~~ ordered to take parenting classes by judge
Hoos Janyne has never attended any classes she was.

P21

Not check true facts

003176

That's total bullshit lots of people knew the starter was out and had to push the car to jump start it

Police never again blow off information and don't check for real facts!!

*

003178

Police say at Bender's house
Writer told Gable the he figured that Gable was at the Bender's that night.

*

They were all talking about crashing and do cars.

Writer said 'Well, anyway, Frank, you were do dope and rapping with them that night.'

*

"Doing dope and rapping about car clouts"

Time line so critical!

Wants a deal

003179

Gable, I don't know, man. Everyone you got wants some kind of a deal!

"Writer" No body got any deals, Frank.

(Note: Gable laughs out loud and says, 'give me a break, these speed freaks don't rat on people unless they get something out of it - Push car'

003180

Had to push car to start it at Hyacinth house
also see 003176

p. 21

003168 Mike Sims Tiki' Lodge. Mark Gust
Mike Sims and his girlfriend Renee at Tiki' Lodge
this was two days after I met Benders. Jan. 27

003168 Dark glasses 12.22.89
I would've been wearing dark glasses.

003171 Jodie
"Gable stated that 'I know it's that girl Jodie'"

All this is me connecting up all they've
fed me to date. I realize from that
she is making up a lie.

003171 Building being well lit
I say, "the Dome bldg. is not well lighted."

Writer explained that it was well lighted! the
whole building is well lit.

003173 State say they have their time line
writer told Gable that we can track his every
movement the night of the 12th and showed Gable
a time line that writer had brought. "Marked
confidential"

003173 Gable stated 'I don't know any Cappie Harden'.

003176 April 8-1990 after arrest
Gable stated he had trouble starting car, if
someone was with him they'd know that
Writer told Gable far as we know there wasn't an

P. 19

Trying create scenarios put me in a spot ^{that} ~~that~~ ~~work~~
003109 Its like I'm trying to help you, but you're try-
to create scenarios and put me in a spot the
wouldn't happen.

but tells us you didn't do it
003110 so we're here to hear whatever you can tell us,
that tells us that you didn't do it, we want
hear it.

Its like that girl re. Jodie.
003115 I would look at any picture and you tell me the
said this, and I'll give you the reason maybe why
they say things. Its like that girl. You ~~said~~ ~~sa~~ ~~sa~~
maybe she said something.

Never said I'm sure where I was!
003136 Now today you're sure you went to Chris' house
No, I'm not sure. I never have said I'm sur

re: Janyne attacking me all the time.
003133 That girl can fight with the best of them.

You're not even gonna be looking for anything
003144 You're here to get anything you can to nail
this case on me, if you think I did it
you are not even gonna ^{be} looking for anything e

like when I told them of eviction notices, the
drug deal. They total pushed that aside!

Jodie

003146 We talked about the Jodie girl

003148 I looked at the picture.

p. 18

003092 Fredrickson tries to lie and say I said
I told Janyne.

→ Total bullshit and I make that very
clear.



met Mark,
How did you first met Mark?
I met him through Kevin.

003093

Talking all about drug deal!!

003100 You can't tell things you don't remember
or aren't sure of, I mean, I would love to
get up on the stand and say "Yeah, I was
at Chris and blah, blah, blah, and I posit
I was here", and these are my witnesses, but
I can't say that and I am not going
to say that.

clarifying I am not certain

what's a car theft?!

003107

I'm going to let it, if I was caught, and he is as
big as, like if ~~the~~ you grab me like that and I
just doing a car theft or something, I'd let him
take me to the police. I mean, what's a car the

003106

Askom's confronted scenario bullshit.

I tell him repeatedly no! no! no! I'd not
fight, I'd go to jail.

P. 17

* Pick Janyne up at 12:30 p.m.
003082 Now this is the 17th he got killed the evening of the 17th? she got off at 12-12:30 p.m. I remember picking Janyne up

003083 I mention Gayla, Patty, but ~~at~~ Gayla didn't come to Salem until Feb. 2 or 3rd with Chris and I.

Don't like stuff in pockets
003087 asked about where I carried a knife. In the car, cause I don't like stuff in my pockets.

Eviction notice
003088 why did ~~that~~ landlady evict you & Janyne. The lady said there was too much traffic in and out. Scott shattered plate!

Nov. 3rd 1989

Childers

003090 asked about Childers? Is he the guy that stole the car? Is he an older guy?

Jodie

003090 asked about Jodie, didn't know her until photo shown. Say July

3167-

3168

When I met Jodie / also see discovery 002294 Jodie matches perfect

p. 16

I don't talk about crimes!

0030668 Gable advised that he has no best friend and that he trusts no one. He went on to say that he's done a lot of crimes that he hasn't been caught for and that's due to the fact that he doesn't talk.

Childers implicates me.

0030668 Gable pointed out an occasion wherein Earl Childers stole a car and implicated him in the crime.

← I say this in Nov 3, 1989, so why would the trust Earl to tell him anything.

commonly don't carry knives

0030669 Gable advised that he had, in past possessed knives, but didn't commonly carry one.

Rambo knife I broke

Not certain about his movements.

003073 Gable reiterated that he was not certain about his movements in Jan, but said he had written down his recollections.

003073* Jodie, July shown photo to know he when questioned about Jodie Swearingen, he denied ever knowing any female by the name of Jodie. After viewing her photo, he recalled knowing her as Jodie, met her twice in July of 1989.

Nov 3, 1989 shown Photo of Jodie

→ Nov. 3, 1989 At that time I wore glasses

003081

I wore glasses

Frank Gable Interviews

P. 15

Melody Garcia

002977 Melody speaks about Tim Natividad

003010 Dennis Gause advised that he got back to Salem between March 4th & 5th

Frank Gable interviews

003049 Also throughout the interview Gable denied a least 3 times that he did not know M.F.

003050 Gable said he was tired of saying he didn't kill M.F.

Nov. 3, 1989

003050 He was given this scenario; that he could have had memory loss due to too much crank and he might have been interrupted doing a car clout or a robb and he didn't know it was M.F. and that ~~ME~~ was grabbed by M.F. and he didn't like to be told He said "No Way."

003066 He advised that he's not certain where he was that evening, that he could have been with Chris; he could have been at home or he might have been in Portland.

Free Felonies


003067 At this time Gable pointed out that in his opinion the state of Oregon would drop two or three felonies plus give two or three future free rich felonies for information which led to the solution of M.F. case \$25,000

Gable also pointed there is a 25,000 reward and cited these as possible motives for people to be fingering him

Detective Ron Martinek

0936 John, I want you to look at me for a minute, would you? John, did you kill Michael Franke
Yes, I did.

0946 J.C. indicated he stabbed him in the heart and arm, and "thought" he had got him in the stomach also.

J.C. Had knife in left hand, on photos what side of wound does knife hit mark show? ? left or right handed person using knife?

~~what were res~~

Lab test on crouse's things?

0942. Crouse flips out, at crime ^{scene} ~~scene~~

01021 Crouse states 8th behind car, matches
Hunseckers.

~~01065~~
01065

anyone ever look along car door to see any marks of break in or on glass, door edge?

(Agent Brown Plymouth Valiant Dr. PK 224 who)

~~was any piece of it found in or
around M.F.'s car?~~

Is knife Crouse says he used consistent
with weapon?

0920 Crouse says hits M.F. in face, bruise
on M.F.'s head, what of inside mouth or gum?

Crouse says M.F. wore glasses, but is unsure

0993 Crouse tells of sweat shirt given to
Wally Fish, had blood on it.

01013^{J.C.} - They know I know the perso.
Cindy: I already know that.

01015 Crouse refers to Forbes i.e. getting
Crouse/Cindy a place to stay. Comes into
see him, got him radio, coffee, visits. ??

Talk to Cindy Hathaway did J.C. tell her
who did crime.

J.C.
00000071

white chevy malibu
knows area well refers to CTP
street lights, two that blink.

~~Cause~~
~~Cause chases guy no~~

000000887 Three 3 days later they can
and arrested me for the murder which I
didn't commit at the time.

0916 J.C. marking pictures.

0918 J.C. say 7 p.m. to 7:10
right on with all testimony!

0919 non-filters/camels smoked two
"I smoked two cigarettes sitting over here"

0948/949 Crouse remembered M.F. wearing
glasses.

what about T.N. shoes?

0950 Crouse breaks down to Cynthia
Hathaway

0952 Larry Crouse states J.C. told him
of doing crime.

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I directed the Appellant's Excerpts of Record Volumes I, II, III, IV, V, VI, & VII to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman

BENJAMIN GUTMAN

Solicitor General

benjamin.gutman@doj.state.or.us

Attorneys for Respondent-Appellant
Max Williams

BG2:bmg/9776846

No. 19-35427

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK E. GABLE,

Petitioner-Appellee,

v.

MAX WILLIAMS,

Respondent-Appellant.

APPELLANT'S EXCERPTS OF RECORD VOLUME VII

Appeal from the United States District Court
for the District of Oregon

FREDERICK M. BOSS
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Attorneys for Appellant

APPELLANT'S EXCERPTS OF RECORD VOLUME VII

Pursuant to Circuit Rule 30-1.7, appellant submits the following Appellant's Excerpts of Record, as indexed below.

INDEX

<u>Clerk's Docket #</u>	<u>Document</u>	<u>E.R. #</u>
34-1	Petition for state post-conviction relief	1378
33-1	Exhibit 103 (Indictment)	1385
	District Court docket	1389

E. R.-1378

COPY

RECEIVED
NOV 16 1998
DEPARTMENT OF JUSTICE
TRIAL DIVISION

My Do
Due
11/16

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

FRANK EDWARD GABLE,)

Petitioner,)

vs.)

STATE OF OREGON,)

Defendant.)

Case No. 95C12041

Third Amended Petition
for Post-Conviction Relief

Comes now the above-named Petitioner, by and through his attorney, Ken Hadley, and respectfully files his Third Amended Petition for Post-Conviction Relief.

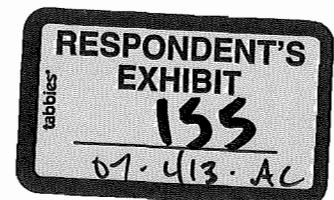
1.

Petitioner is imprisoned in the Oregon State Penitentiary in Salem, Oregon, and at the time of the filing of his initial Petition for Post-Conviction Relief was unlawfully confined and restrained of his liberty by the Superintendent of the Oregon State Penitentiary.

2.

Petitioner's imprisonment is by virtue of a judgment and sentence imposed by Marion County Circuit Courts in the case of State of Oregon v. Frank Edward Gable, Case No. 90C-20442.

The conviction was entered July 16, 1991. The Sentencing Judge was C. Gregory West, and the Judgment imposed, sentenced Petitioner to the legal and physical custody of the Oregon State Corrections Division for life without the possibility of release or parole.



3.

An appeal was taken from said conviction and sentence to the Oregon Court of Appeals.

The result was that the conviction was affirmed and this occurred on April 20, 1994. The Supreme Court denied review on June 21, 1994.

4.

Petitioner has not previously applied for post-conviction relief in this matter.

5.

Petitioner asserts that he has not had funds to hire an attorney to represent him in his Post-conviction proceedings.

6.

The offenses with which Petitioner was charged in the foregoing proceedings were that of Aggravated Murder and Murder. Petitioner was convicted on six counts of Aggravated Murder and one count of Murder following a jury trial.

7.

Petitioner was represented at trial by attorneys Robert L. Abel and John E. Storkel. The State was represented by Tom C. Bostwick and Sarah A. Moore.

8.

This Petition is being filed within the time allowed by statute and extensions allowed by the Court for good cause shown.

9.

The Petitioner's imprisonment was, and is, illegal in the proceedings as set forth above, which have resulted in a substantial denial of Petitioner's rights in violation of ORS 138.530 in

that Petitioner was denied effective assistance of counsel under the Sixth and Fourteenth
Amendments to the U.S. Constitution under Article I, Section 11 of the Oregon State
Constitution in that counsel Robert L. Abel and John E. Storkel failed to:

1. Meet with the defendant and keep him advised of the State's investigation and the Defense's investigation.
2. Meet with the Defendant before and during trial to plan an effective defense strategy.
3. Give an Alibi Notice even though Defendant had always denied being at the scene of the death of Michael Francke.
4. Read the reports and discovery furnished by the State of Oregon.
5. Read the defense investigator reports, consult with them on an ongoing basis, and effectively use the information the investigators provided them with before and during trial.
6. Against advice of defense investigators, turned over all information obtained by defense investigators to the State as discovery without reviewing to determine which portions were discoverable and which should have been kept as non-discoverable work product or otherwise irrelevant, immaterial or not discoverable.
7. Effectively prepare for and effectively cross-examine the State's witnesses in general, and the following in particular:
 - a. Jodie Swearingen
 - b. Cappie Harden
 - c. Janyne Gable
 - d. Mike Keerins
 - e. John Crouse
 - f. John Kevin Walker
 - g. Kris Keerins
8. Adequately investigate Timothy Natividad's and/or John Crouse's involvement in the murder of Michael Francke.
9. Adequately failed to develop, investigate and produce at trial evidence that Timothy Natividad and/or John Crouse was the killer of Michael Francke.

12.

Petitioner re-alleges sections 1 through 8 of his First Claim of Relief and incorporates them in the third.

13.

Petitioner was denied his right to due process under the Fourteenth Amendment to the U.S. Constitution and his right to be heard by himself under Article 1, Sections 10 and 11 of the Oregon State Constitution in that the presiding Judge, Honorable C. Gregory West failed to:

1. Give the defendant opportunity to be heard on his letter dated April 2, 1991 in which he requested a hearing on his attorneys failure to consult with him and prepare for trial (copy of exhibit "A" attached).
2. Give the defendant an opportunity to be heard on his letter dated July 1, 1991 in which he asked the court for relief based on several matters including the lack of preparation, taking away defendant's right to testify, and odor on the breath of Mr. Abel (copy of exhibit "B" attached).
3. Postpone the trial or grant other appropriate relief when almost all of the defense investigators presented a letter to Robert L. Abel and John E. Storkel, that was delivered to the court, indicating that the defense attorneys were not prepared to proceed to trial.

For his **FOURTH CLAIM OF RELIEF**, Petitioner alleges:

14.

Petitioner re-alleges sections 1 through 8 of his First Claim of Relief and incorporates the fourth.

15.

1 The Court lacked jurisdiction of the defendant because the indictment on which he was
2 charged was invalid for the following reasons:
3

- 4 1. The foreman of the grand jury, Thomas H. Denney, OSB No. 66034 was a career
5 prosecutor employed by the Department of Justice of the State of Oregon which was
6 involved in the investigation of the Francke homicide and should have been excused
7 from service on the grand jury pursuant to ORS 10.050 (2).
8 2. Oregon State Police Officer William Pierce was permitted to sit in on the grand jury
9 proceedings in violation of ORS 132.090.

For his **FIFTH CLAIM OF RELIEF**, Petitioner alleges:

16.

11 Petitioner re-alleges sections 1 through 8 of his First Claim of Relief and incorporates
12 them in the fifth.
13

17.

14 Petitioner was denied effective assistance of appellate counsel under the Sixth and
15 Fourteenth Amendments to the U.S. Constitution and under Article I, Section 11 of the Oregon
16 State Constitution in that appellate counsel failed to:
17

18 1. Properly and adequately argue all issues adequately raised by trial counsel. In
19 particular the trial court's failure to allow petitioners attorney's to present evidence that Timothy
20 Natividad and/or John Crouse were involved in the murder of Michael Francke.
21

22 2. Properly raise on appeal that the indictment was in violation of ORS 10.050 (2)
23 because the foreman, Thomas H. Denney, OSB No. 66034 was a career prosecutor employed by
24 the Department of Justice of the State of Oregon and because unauthorized persons were allowed
25 to sit in during grand jury testimony and deliberations in violation of ORS 132.090.
26

For his **SIXTH CLAIM OF RELIEF**, Petitioner alleges:

18.

Petitioner re-alleges sections 1 through 8 of his First Claim of Relief and incorporates them in the sixth.

19.

Petitioner was denied due process under the Fourteenth Amendment under the U.S. Constitution and his rights under Article VI and his rights under Article I, Section 11 of the Oregon State Constitution for the following reasons:

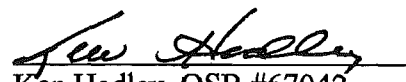
1. That prosecutors Bostwick and Moore failed to disclose exculpatory evidence and failed to disclose plea agreements or promises to the following key witnesses:

- a. Jodie Swearingen
- b. Cappie Harden
- c. Janyne Gable
- d. Mike Keerins
- e. John Crouse
- f. John Kevin Walker
- g. Kris Keerins

WHEREFORE, Petitioner prays this Court for an order reversing said conviction, vacating the sentence and releasing Petitioner from the custody of the Defendant, and for such further relief as this Court deems just and proper.

DATED this 10th day of November 1998.

Respectfully submitted:


Ken Hadley, OSB #67042
Attorney for Petitioner

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

THE STATE OF OREGON,) SECRET INDICTMENT
)
Plaintiff,) ORS 163.095 (COUNT I, COUNT II, COUNT III,
) COUNT IV, COUNT V, COUNT VI) F/U
vs.) ORS 163.115 COUNT VII F/U
) ORS 163.105 DEATH PENALTY
GABLE, FRANK EDWARD,) ORS 161.405 ATTEMPT
)
Defendant.) COURT NO. 90 C20442

The defendant is accused by the Grand Jury of the County of Marion and the State of Oregon, by this indictment of the criminal offense(s) of

COUNT I - AGGRAVATED MURDER
COUNT II - AGGRAVATED MURDER
COUNT III - AGGRAVATED MURDER
COUNT IV - AGGRAVATED MURDER
COUNT V - AGGRAVATED MURDER
COUNT VI - AGGRAVATED MURDER
COUNT VII - MURDER

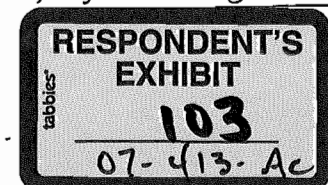
STATE OF OREGON
MARION COUNTY COURTS
JUDICIAL CLERK ADMINISTRATOR
1890 APR -6 AM 11:50
ENTERED
DOCKETED
NOTICE

committed as follows:

COUNT I - The defendant, on or about January 17, 1989, in Marion County, Oregon, did then and there unlawfully, feloniously, and intentionally cause the death of another human being, to-wit: James Michael Francke, a person charged with the duty of custody, control or supervision of convicted persons, by stabbing said James Michael Francke, said death being related to the performance of James Michael Francke's official duties in the justice system.

COUNT II - As part of the same act and transaction as alleged in COUNT I above, the defendant on or about January 17, 1989, in Marion County, Oregon, did then and there unlawfully, feloniously, and intentionally attempt to commit the crime of Robbery in the First Degree, to-wit: on or about January 17, 1989, in Marion County, Oregon, did unlawfully, feloniously, and knowingly use physical force upon James Michael Francke, by stabbing James Michael Francke, and did use a dangerous weapon, to-wit: a knife, while in the course of attempting to commit theft of property, with the intent of preventing resistance to the said defendant's taking of the said property, and in the course of and in the furtherance of said crime which the said defendant was attempting to commit, the said defendant personally and intentionally did cause the death of another human being, to-wit: James Michael Francke, a person who was not a participant in the crime, by stabbing James Michael Francke.

COUNT III - As part of the same act and transaction as alleged in COUNT I and COUNT II above, the defendant, on or about January 17, 1989, in Marion County, Oregon, did then and there unlawfully, feloniously, and intentionally, in an effort to conceal the commission of the crime of Robbery in the First Degree, cause the death of another human being, to-wit: James Michael Francke, by stabbing James Michael Francke.



COUNT IV - As part of the same act and transaction as alleged in COUNT I, COUNT II and COUNT III above, the defendant, on or about January 17, 1989, in Marion County, Oregon, did then and there unlawfully, feloniously, and intentionally, in an effort to conceal the identity of the perpetrator of the crime of Robbery in the First Degree, cause the death of another human being, to-wit: James Michael Francke, by stabbing James Michael Francke.

COUNT V - As part of the same act and transaction as alleged in COUNT I, COUNT II, COUNT III and COUNT IV above, the defendant, on or about January 17, 1989, in Marion County, Oregon, did then and there unlawfully, feloniously, and intentionally, in an effort to conceal the commission of the crime of attempted theft, cause the death of another human being, to-wit: James Michael Francke, by stabbing James Michael Francke.

COUNT VI - As part of the same act and transaction as alleged in COUNT I, COUNT II, COUNT III, COUNT IV, and COUNT V above, the defendant, on or about January 17, 1989, in Marion County, Oregon, did then and there unlawfully, feloniously, and intentionally, in an effort to conceal the identity of the perpetrator of the crime of attempted theft, cause the death of another human being, to-wit: James Michael Francke, by stabbing James Michael Francke.

COUNT VII - As part of the same act and transaction as alleged in COUNT I, COUNT II, COUNT III, COUNT IV, COUNT V and COUNT VI above, the defendant, on or about January 17, 1989, in Marion County, Oregon, did then and there unlawfully, feloniously, and intentionally cause the death of another human being, to-wit: James Michael Francke, by stabbing James Michael Francke.

Witnesses:
See attached witness list.

A TRUE BILL,

Thomas H. Denney
Grand Jury Foreman

DALE W. PENN
Marion County District Attorney

Sarah A. Moore
04/05/90
DATE

DOB: 08/28/59
WARRANT REQUEST

It is ordered that a warrant be issued for the arrest of the defendant; bail being set in the amount of:

\$ N/A

Date

Judge

4-6-90
[Signature]

CLERK'S CERTIFICATE

I hereby certify this copy to be a true, full and correct copy of the original now on record in my office

Clerk of the Circuit Court

By: _____
Deputy

STATE OF OREGON vs. FRANK EDWARD GABLE

INDICTMENT WITNESS LIST - Page 1 of 2

Jodie Mae Swearingen	Douglas Robert Scritchfield
Cappie Clifford Harden	Michael Francis Goss
Mark Gesner	Jodi VanSanten
Pam Winn	Linda Wiktorek
Rachel Shaver	Linda Perkins
Christopher James Warila	Stephanie Franklin
Gayla Jean Freeman	Corie Frauendiener
Earl Childers	Jerry Thompson
John Kevin Walker	Robert Draves
Daniel Walsh	Robert Hoem
Richard Ringler	Noe Pequeno
Randall James Studer	William Cleveland
Teresa Hope Ross	Ellen Mary Chase
Shellie Lynne Thomas	Kay Duffey
John Allen Bender	Kristin Catherine Studer
Kelly Ann Bender	Lynne Ellen Studer
Edward Dockins	Julie Ringler
Kevin Dockins	Evelyn Elliott
Larry Wayne Pilgrim	Johnny Crouse
Kris Sean Keerins	Amadeo Garza
Michael Owen Keerins	Verna Jo Hensley
Kenneth Pecyna - OSP	Evelyn L. Meeks
Richard S. Peterson	Jan Curry
Norma Phillips	Charles Fred Nichols
David Caulley	Diana Moore
Irma Denis	Ted Long
Larry Hill	Sonia Hoyt
Robert Kennicott	Tom Wells
Jim Haskins	Joan Nelson
Clinton Branum	Stephen Laknas
Stan Kudaroff	Tyrone Williams
Al Friesen	Mary Blake
James Pex - OSP Crime Lab	Larry V. Lewman, M.D.
Thomas B. Fuller	Meril Platt Craig
Lowell Kester	Constance Vandehey
William Beagen	Frances Lushenko
Thomas Martin Rousseau - SPD	Bethel Wayne Hunsaker
Mark Nassar	Robey C. Eldridge
Stephen John Rubino	Stanley Keith Groom, Jr.
Thomas R. Mason - SPD	Elyse Clawson
Lewis Sayre, M.D.	Randy Martinak
Thomas Toombs	Cindy Burgess
Chris Rasmussen	B. J. Funk
Howard Andersen	Dennis Nelsen
Steven Gassner	Manfred D. Maass
Timothy Kent	Chris Donovan Reed
Viki Jean Olson Boyd Warren	Penny Lee Fox
Jerry Frazier	Cynthia Hathaway
Floyd Bunn	Deborah Hollopeter
Eloise January	Susan Lee Salter

STATE OF OREGON vs. FRANK EDWARD GABLE

INDICTMENT WITNESS LIST - Page 2 of 2

Timothy Marietta
Whitney Fish
Freddie Franklin Smith, Sr.
Lucinda Lou Cooley
Adelyne Hollomon
Dave Larson
Edward Patrick Francke
Dennis Plante
Larry Duane Crouse, Sr.
Nicholas Louis Armenakas, Jr.
Cory Streisinger
Billie Parker
Lynette Goltz
Kevin B. Francke
Richard James Schuening - OSP
Richard Pileggi - OSP
John Salle - OSP
Bruce Sarpola
Nestor Aujero
Fred Akom - OSP
Kent Barker - KPD
Ronald Bissonnette
Jerili Yarbrough
Kent McLain
John McCafferty - OSP
Dennis O'Donnell - OSP
John David Freeman

Roger Kirschner
Nancy Smith
Edward F. Mouery, OSP
Josie Martin
Edward Albert McCallister
Philip McHarness
William J. Pierce - OSP
Phil Stanford
Loren Richard Laird - OSP
Robert L. Lewis, M.D.
Kevin J. Cornutt
Stella Olson
Jeanne Schwartz
Bingta Ericksen Francke
Loren Glover - OSP
Paul Bain - OSP
Karl Nelson - OSP
John Chilcote
Michael Hurley - OSP
Judi Swearingen
Thomas Arnold
Jim Swearingen
Darrell Berning - OSP
Karen Cowan
Eric Mason
Phil Manzano

E. R.-1389

APPEAL, CONSENT, HABEAS, STAYED, TERMINATED

U.S. District Court
District of Oregon (Portland (3))
CIVIL DOCKET FOR CASE #: 3:07-cv-00413-AC

Gable v. Williams

Assigned to: Magistrate Judge John V. A Costa

Case in other court: 9th Circuit Court of Appeals, 19-35427

9th Circuit Court of Appeals, 19-35436

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 03/22/2007

Date Terminated: 04/18/2019

Jury Demand: None

Nature of Suit: 530 Prisoner Petitions:

Habeas Corpus (General)

Jurisdiction: Federal Question

Petitioner

Frank E. Gable

represented by Mark P. Ahlemeyer
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Fax: 503-326-5524
Email: mark_ahlemeyer@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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Email: steve_wax@fd.org
TERMINATED: 05/08/2007

V.

E. R.-1390

Respondent

Max Williams

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Email: andrew.hallman@doj.state.or.us
TERMINATED: 05/23/2014

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University of Oregon Office of General
Counsel
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541-346-3082
Fax: 641-346-6110
Email: dougpark@uoregon.edu
TERMINATED: 10/24/2007

Lynn David Larsen
State of Oregon Department of Justice
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503-947-4700

E. R.-1391

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 TERMINATED: 06/08/2007

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 503-947-4700
 Fax: 503-947-4792
 Email: Rafael.Caso@doj.state.or.us
 TERMINATED: 03/24/2016

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 summer.r.gleason@doj.state.or.us
 TERMINATED: 07/13/2010

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 Email:
 jpuracal@forensicjusticeproject.org
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/22/2007	1	

E. R.-1392

		Petition for Writ of Habeas Corpus (2254 - State). Receipt issued for #14161. Filed by Frank E. Gable against Max Williams. (cib) Modified on 3/27/2007 (Brost, Colleen). (Entered: 03/27/2007)
03/22/2007	<u>2</u>	Motion for Appointment of Counsel. Filed by Frank E. Gable. (cib) (Main Document 2 replaced on 10/28/2015) (joha). (Entered: 03/27/2007)
03/22/2007	<u>3</u>	Notice of Case Assignment: This case is assigned to Judge Donald C. Ashmanskas. (cib) (Entered: 03/27/2007)
03/22/2007	<u>10</u>	Fee in amount of \$5.00 collected; Receipt No. 14161 issued. (cib) (Main Document 10 replaced on 10/28/2015) (joha). (Entered: 04/13/2007)
04/03/2007	<u>5</u>	Habeas Corpus Scheduling Order Serving Petition for Writ of Habeas Corpus 2254 <u>1</u> on respondent. Signed on 4/3/07, by Judge Donald C. Ashmanskas. (Attachments: # <u>1</u> Attachment petition# <u>2</u> Attachment) (peg) (Entered: 04/06/2007)
04/03/2007	<u>6</u>	Habeas Corpus Scheduling Order Serving Petition for Writ of Habeas Corpus 2254 <u>1</u> on respondent. Signed on 4/3/07 by Judge Donald C. Ashmanskas. (Attachments: # <u>1</u> petition (2) acknowledgment letter) (peg) (Entered: 04/06/2007)
04/03/2007	<u>7</u>	Habeas Corpus Scheduling Order Serving Petition for Writ of Habeas Corpus 2254 <u>1</u> on respondent. Signed on 4/3/07 by Judge Donald C. Ashmanskas. (Attachments: # <u>1</u> Petition# <u>2</u> acknowledgment letter) (ntm) (Entered: 04/06/2007)
04/06/2007	<u>4</u>	ORDER Granting Petitioner's Motion for Appointment of Counsel <u>2</u> . The Federal Public Defender is appointed to represent petitioner in this proceeding. The Clerk is directed to send the Federal Public Defender a copy of the file. IT IS SO ORDERED. Signed on 4/3/07, by Judge Donald C. Ashmanskas. (peg) (Entered: 04/06/2007)
04/06/2007	<u>8</u>	Order for Administrative Correction of the Record. A Clerical error has been discovered in the case record. In accordance with Fed. R. Civ. P. 60(a), the Clerk is directed to make the following administrative corrections to the record and to notify all parties accordingly. Due to docketing error and slow systems response the scheduling order was entered into the system 3 times. Therefore docket entries #6 and #7, are STRICKEN as MOOT. (peg) (Entered: 04/06/2007)
04/09/2007	<u>9</u>	Acceptance and Acknowledgment of Service of Petition for Writ of Habeas Corpus and Scheduling Order upon the State Attorney General Answer to the Habeas Petition is due by 6/8/2007. Filed by Max Williams. (Larsen, Lynn) (Entered: 04/09/2007)
05/08/2007	<u>11</u>	Notice of Attorney Substitution: Attorney Nell Brown is substituted as counsel of record in place of Attorney Steven T. Wax. Filed by Frank E. Gable. (Wax, Steven) (Entered: 05/08/2007)
06/08/2007	<u>12</u>	

E. R.-1393

		Notice of Attorney Substitution: Attorney Douglas Y. S. Park is substituted as counsel of record in place of Attorney Lynn David Larsen. Filed by Max Williams. (Park, Douglas) (Entered: 06/08/2007)
06/08/2007	<u>13</u>	Motion for Extension of Time. Filed by Max Williams. (Larsen, Lynn) (Entered: 06/08/2007)
06/08/2007	<u>14</u>	Affidavit of Lynn David Larsen in Support of Motion. Filed by Max Williams. (Related document(s): Motion for Extension of Time <u>13</u> .) (Larsen, Lynn) (Entered: 06/08/2007)
06/12/2007	<u>15</u>	Record of Order by Judge Ashmanskas - GRANTING Respondent's motion <u>13</u> for extension of time to 9/10/07, to file a response to the petition for writ of habeas corpus. (peg) (Entered: 06/14/2007)
09/10/2007	<u>16</u>	Joint Motion for Extension of Time (titled as Joint Motion for Revised Scheduling Order). Filed by Max Williams. (Park, Douglas) (Entered: 09/10/2007)
09/10/2007	<u>17</u>	Affidavit of Lynn David Larsen in Support of Motion for Revised Scheduling Order. Filed by Max Williams. (Related document(s): Motion for Extension of Time <u>16</u> .) (Park, Douglas) (Entered: 09/10/2007)
09/11/2007	<u>18</u>	Motion to Supplement Joint Motion for Revised Scheduling Order. Filed by Frank E. Gable. (Attachments: # <u>1</u> Proposed Order) (Brown, Nell) (Entered: 09/11/2007)
09/17/2007	<u>19</u>	Order on Joint Motion for Revised Scheduling Order Granting Motion for Extension of Time <u>16</u> and Motion to Supplement <u>18</u> as follows: (1) Respondent has until 12/10/07, to file exhibits; (2) Petitioner has until 6/9/08, to file an amended petition and supporting memorandum; (3) Respondent has until 8/11/08, to file an answer and response to petitioner's amended petition and (4) The statute of limitations pursuant to 28 USC sec 2244 be tolled from 3/22/07, the date petitioner filed his pro se federal habeas petition, until the filing of petitioner's amended petition on or before 6/9/08. IT IS SO ORDERED. Signed on 9/14/07 by Judge Donald C. Ashmanskas. (peg) (Entered: 09/18/2007)
10/24/2007	<u>20</u>	Notice of Attorney Substitution: Attorney Summer R. Gleason is substituted as counsel of record in place of Attorney Douglas Park. Filed by Max Williams. (Gleason, Summer) (Entered: 10/24/2007)
11/30/2007	<u>21</u>	Joint Motion for Stay (titled as Joint Motion to Stay Judgment Pending State Appeal). Filed by Max Williams. (Gleason, Summer) (Entered: 11/30/2007)
11/30/2007	<u>22</u>	Affidavit of Summer R. Gleason in Support of Motion (titled as Affidavit of Summer R. Gleason in Support of Joint Motion to Stay). Filed by Max Williams. (Related document(s): Motion for Stay <u>21</u> .) (Gleason, Summer) (Entered: 11/30/2007)
12/10/2007	23	RECORD OF ORDER: Granting Joint Motion for Stay <u>21</u> . Counsel shall notify the court within 30 days of the date Petitioner's state appeal becomes

E. R.-1394

		final. Ordered by Judge Donald C. Ashmanskas. (prslc1,) (Entered: 12/10/2007)
03/05/2008	24	Notice of Case Reassignment: This case has been reassigned from Judge Donald C. Ashmanskas to Judge John V. A costa. (pvh) (Entered: 03/05/2008)
04/22/2010	25	Notice of Association of Attorney Andrew D. Hallman and Summer R. Gleason for Max Williams Filed by Max Williams (Gleason, Summer) (Entered: 04/22/2010)
07/13/2010	26	Notice of Attorney Withdrawal: (titled "Notice of Withdrawal of Counsel" (Summer R. Gleason)) Filed by Max Williams (Hallman, Andrew) (Entered: 07/13/2010)
09/13/2010	27	SCHEDULING ORDER by Judge A costa - SETTING a Telephone Status Conference for Monday, September 27, 2010, at 9:30A M; Court staff will initiate the call. (peg) (Entered: 09/13/2010)
09/28/2010	28	MINUTES of Proceedings: Telephone Status Conference held by Judge A costa. ORDER: The Clerk of the Court is DIRECTED to administratively close this action. No judgment shall be entered, and at the appropriate time either party may move to re-open the case under the original caption and case number. Nell Brown present as counsel for petitioner. Andrew Hallman present as counsel for respondent. Court Reporter: None. Magistrate Judge John V. A costa presiding. (peg) (Entered: 09/28/2010)
04/09/2012	29	ORDER AUTHORIZING ANCILLARY APPOINTMENT UNDER 18 U.S.C. Section 3006A (c). IT IS ORDERED that the Federal Public Defender is granted the authority under the provisions of 18 U.S.C. Section 3006A (c) for an ancillary appointment in the Oregon state court case of Gable v. Oregon, No. S059686. Signed on 4/9/2012 by Magistrate Judge John V. A costa. (gw) (Entered: 04/11/2012)
02/06/2014	30	Unopposed Motion to Reopen Case and to Enter Order Implementing Stipulated Schedule. Filed by Frank E. Gable. (Attachments: # 1 Proposed Order) (Brown, Nell) (Entered: 02/06/2014)
02/11/2014	31	ORDER RE-OPENING CASE AND IMPLEMENTING STIPULATED SCHEDULE: Granting Motion to Reopen 30 . Signed on 2/11/2014 by Magistrate Judge John V. A costa. (gw) (Entered: 02/18/2014)
02/26/2014	32	Notice of Association of Attorney Nicholas M. Kallstrom, Nicholas M. Kallstrom for Max Williams. Filed by Max Williams (Kallstrom, Nicholas) (Entered: 02/26/2014)
03/04/2014	33	Exhibits 101-144 to Answer -- Part A. Filed by Max Williams. (Attachments: # 1 Exhibit Part A Part 1, # 2 Exhibit Part A Part 2, # 3 Exhibit Part A Part 3, # 4 Exhibit Part A Part 4, # 5 Exhibit Part A Part 5) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	34	Exhibits 145-181 to Answer -- Part B. Filed by Max Williams. (Attachments: # 1 Exhibit Part B Part 1, # 2 Exhibit Part B Part 2, # 3 Exhibit Part B Part 3, # 4 Exhibit Part B Part 4) (Kallstrom, Nicholas) (Entered: 03/04/2014)

E. R.-1395

03/04/2014	<u>35</u>	Exhibits 182-248 to Answer -- Part C. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part C Part 1, # <u>2</u> Exhibit Part C Part 2, # <u>3</u> Exhibit Part C Part 3, # <u>4</u> Exhibit Part C Part 4) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>36</u>	Exhibits 249-291 to Answer -- Part D. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part D Part 1, # <u>2</u> Exhibit Part D Part 2, # <u>3</u> Exhibit Part D Part 3, # <u>4</u> Exhibit Part D Part 4) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>37</u>	Exhibits 292 to Answer -- Part E. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part E Part 1, # <u>2</u> Exhibit Part E Part 2, # <u>3</u> Exhibit Part E Part 3, # <u>4</u> Exhibit Part E Part 4) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>38</u>	Exhibits 293-294 to Answer -- Part F. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part F Part 1, # <u>2</u> Exhibit Part F Part 2, # <u>3</u> Exhibit Part F Part 3, # <u>4</u> Exhibit Part F Part 4) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>39</u>	Exhibits 295 to Answer -- Part G. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part G Part 1, # <u>2</u> Exhibit Part G Part 2, # <u>3</u> Exhibit Part G Part 3, # <u>4</u> Exhibit Part G Part 4) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>40</u>	Exhibits 296-297 to Answer -- Part H. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part H Part 1, # <u>2</u> Exhibit Part H Part 2, # <u>3</u> Exhibit Part H Part 3, # <u>4</u> Exhibit Part H Part 4) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>41</u>	Exhibits 298 to Answer -- Part I. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part I Part 1, # <u>2</u> Exhibit Part I Part 2, # <u>3</u> Exhibit Part I Part 3) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>42</u>	Exhibits 299-300 to Answer -- Part J. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part J Part 1, # <u>2</u> Exhibit Part J Part 2, # <u>3</u> Exhibit Part J Part 3, # <u>4</u> Exhibit Part J Part 4, # <u>5</u> Exhibit Part J Part 5) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>43</u>	Exhibits 301-303 to Answer -- Part K. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part K Part 1, # <u>2</u> Exhibit Part K Part 2, # <u>3</u> Exhibit Part K Part 3, # <u>4</u> Exhibit Part K Part 4, # <u>5</u> Exhibit Part K Part 5) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>44</u>	Exhibits 304-345 to Answer -- Part L. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part L Part 1, # <u>2</u> Exhibit Part L Part 2, # <u>3</u> Exhibit Part L Part 3) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>45</u>	Exhibits 346-385 to Answer -- Part M. Filed by Max Williams. (A ttachments: # <u>1</u> Exhibit Part M Part 1, # <u>2</u> Exhibit Part M Part 2, # <u>3</u> Exhibit Part M Part 3, # <u>4</u> Exhibit Part M Part 4) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>46</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part A) Filed by Max Williams. (A ttachments: # <u>1</u> A ttachment Part A Part 1, # <u>2</u> A ttachment Part A Part 2) (K allstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>47</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part B) Filed by Max Williams. (A ttachments: # <u>1</u> A ttachment Part B Part 1, # <u>2</u> A ttachment Part B Part 2) (K allstrom, Nicholas) (Entered: 03/04/2014)

E. R.-1396

03/04/2014	<u>48</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part C) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part C Part 1, # <u>2</u> Attachment Part C Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>49</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part D) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part D Part 1, # <u>2</u> Attachment Part D Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>50</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part E) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part E Part 1, # <u>2</u> Attachment Part E Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>51</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part F) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part F Part 1, # <u>2</u> Attachment Part F Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>52</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part G) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part G Part 1, # <u>2</u> Attachment Part G Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>53</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part H) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part H Part 1, # <u>2</u> Attachment Part H Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>54</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part I) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part I Part 1, # <u>2</u> Attachment Part I Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>55</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part J) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part J Part 1, # <u>2</u> Attachment Part J Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>56</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part K) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part K Part 1, # <u>2</u> Attachment Part K Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>57</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part L) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part L Part 1, # <u>2</u> Attachment Part L Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>58</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part M) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part M Part 1, # <u>2</u> Attachment Part M Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>59</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part N) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part N Part 1, # <u>2</u> Attachment Part N Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/04/2014	<u>60</u>	Transcript of State Court Proceedings (titled as Transcript Designation -- Part O) Filed by Max Williams. (Attachments: # <u>1</u> Attachment Part O Part 1, # <u>2</u> Attachment Part O Part 2) (Kallstrom, Nicholas) (Entered: 03/04/2014)
03/20/2014	<u>61</u>	A amended Petition for Writ of Habeas Corpus (2254) . Filed by Frank E. Gable against Frank E. Gable (Attachments: # <u>1</u> Exhibit A - Order Reinstating

E. R.-1397

		Appeal, # 2 Exhibit B - Court of Appeals Decision, # 3 Exhibit C - Cert Petition, # 4 Exhibit D - Cert Denied). (Brown, Nell) (Entered: 03/20/2014)
05/23/2014	66	Notice of Attorney Substitution: Attorney Samuel A. Kubernick is substituted as counsel of record in place of Attorney Andrew D. Hallman Filed by Max Williams (Kubernick, Samuel) (Entered: 05/23/2014)
08/07/2014	68	Unopposed Motion for Extension of Time to File Brief in Support of Amended Petition. Filed by Frank E. Gable. (Brown, Nell) (Entered: 08/07/2014)
08/07/2014	69	Declaration of Counsel in Support of Motion for Extension of Time. Filed by Frank E. Gable. (Related document(s): Motion for Extension of Time 68 .) (Brown, Nell) (Entered: 08/07/2014)
08/11/2014	70	ORDER: Granting Petitioner's Motion for Extension of Time 68 . Petitioner's brief is due by 10/14/2014. Answer is due by 1/12/2015. Habeas Petition is taken under advisement as of 1/27/2015. Ordered by Magistrate Judge John V. A Costa. (prslc1) (Entered: 08/11/2014)
10/14/2014	71	Motion for Extension of Time to File Brief in Support of Amended Petition. Filed by Frank E. Gable. (Brown, Nell) (Entered: 10/14/2014)
10/14/2014	72	Declaration of Counsel in Support of Motion for Extension. Filed by Frank E. Gable. (Related document(s): Motion for Extension of Time 71 .) (Brown, Nell) (Entered: 10/14/2014)
10/15/2014	73	ORDER: Granting Petitioner's Motion for Extension of Time 71 . Petitioner's brief is due by 10/17/2014. Ordered by Magistrate Judge John V. A Costa. (prslc1) (Entered: 10/15/2014)
10/17/2014	74	Brief in Support of Petition. Filed by Frank E. Gable. (Related document(s): Amended Petition for Writ of Habeas Corpus(2254), 61 .) (Brown, Nell) (Entered: 10/17/2014)
10/22/2014	75	Exhibits Appendix A re Brief in Support of Petition 74 . Filed by Frank E. Gable. (Attachments: # 1 Appendix A - Part 1, # 2 Appendix A - Part 2, # 3 Appendix A - Part 3, # 4 Appendix A - Part 4, # 5 Appendix A - Part 5, # 6 Appendix A - Part 6) (Brown, Nell) (Entered: 10/22/2014)
10/22/2014	76	Exhibits Exhibit A re Brief in Support of Petition 74 . Filed by Frank E. Gable. (Attachment # 1 Exhibit A). Exhibit A includes a CD of an audio file that is conventionally filed in the Clerk's Office. (Brown, Nell) Modified on 10/23/2014 to make note of audio file. (gw). (Entered: 10/22/2014)
10/22/2014	77	Exhibits Exhibit B re Brief in Support of Petition 74 . Filed by Frank E. Gable. (Attachments: # 1 Exhibit B - Part 1, # 2 Exhibit B - Part 2, # 3 Exhibit B - Part 3) (Brown, Nell) (Entered: 10/22/2014)
10/22/2014	78	Exhibits Exhibit C re Brief in Support of Petition 74 . Filed by Frank E. Gable. (Attachments: # 1 Exhibit C - Part 1, # 2 Exhibit C - Part 2, # 3 Exhibit C - Part 3, # 4 Exhibit C - Part 4) (Brown, Nell) (Entered: 10/22/2014)
10/22/2014	79	

E. R.-1398

		Exhibits Exhibit D re Brief in Support of Petition 74 . Filed by Frank E. Gable. (Attachments: # 1 Exhibit D - Part 1, # 2 Exhibit D - Part 2, # 3 Exhibit D - Part 3, # 4 Exhibit D - Part 4) (Brown, Nell) (Entered: 10/22/2014)
10/22/2014	80	Exhibits Exhibit E re Brief in Support of Petition 74 . Filed by Frank E. Gable. (Attachments: # 1 Exhibit E - Part 1, # 2 Exhibit E - Part 2, # 3 Exhibit E - Part 3, # 4 Exhibit E - Part 4, # 5 Exhibit E - Part 5, # 6 Exhibit E - Part 6, # 7 Exhibit E - Part 7, # 8 Exhibit E - Part 8, # 9 Exhibit E - Part 9) (Brown, Nell) (Entered: 10/22/2014)
10/22/2014	81	Exhibits Exhibit F re Brief in Support of Petition 74 . Filed by Frank E. Gable. (Attachments: # 1 Exhibit F) (Brown, Nell) (Entered: 10/22/2014)
10/22/2014	82	Exhibits Exhibit G re Brief in Support of Petition 74 . Filed by Frank E. Gable. (Attachments: # 1 Exhibit G) (Brown, Nell) (Entered: 10/22/2014)
10/22/2014	83	Exhibits Exhibit H re Brief in Support of Petition 74 . Filed by Frank E. Gable. (Attachments: # 1 Exhibit H - Part 1, # 2 Exhibit H - Part 2, # 3 Exhibit H - Part 3, # 4 Exhibit H - Part 4, # 5 Exhibit H - Part 5, # 6 Exhibit H - Part 6) (Brown, Nell) (Entered: 10/22/2014)
01/09/2015	84	Unopposed Motion for Extension of Time to Answer Amended Petition for Writ of Habeas Corpus(2254), 61 . Filed by Max Williams. (Kallstrom, Nicholas) (Entered: 01/09/2015)
01/09/2015	85	Declaration of Nick M. Kallstrom . Filed by Max Williams. (Related document (s): Motion for Extension of Time to Answer a Complaint/Petition 84 .) (Kallstrom, Nicholas) (Entered: 01/09/2015)
01/12/2015	86	ORDER: Granting Respondent's Motion for Extension of Time to Answer 84 . Answer and Response to Amended Petition is due by 4/13/2015. Amended Petition is taken UNDER ADVISEMENT on 4/28/2015. Ordered by Magistrate Judge John V. A costa. (prslc1) (Entered: 01/12/2015)
02/19/2015	87	Notice of Association of Attorney Rafael A. Caso,Rafael A. Caso for Max Williams. Filed by Max Williams (Caso, Rafael) (Entered: 02/19/2015)
04/10/2015	88	Motion for Extension of Time to Answer Amended Petition for Writ of Habeas Corpus(2254), 61 . Filed by Max Williams. (Kallstrom, Nicholas) (Entered: 04/10/2015)
04/10/2015	89	Declaration of Nick M. Kallstrom . Filed by Max Williams. (Related document (s): Motion for Extension of Time to Answer a Complaint/Petition 88 .) (Kallstrom, Nicholas) (Entered: 04/10/2015)
04/10/2015	90	Reply in Opposition to Motion for Extension of Time to Answer Amended Petition for Writ of Habeas Corpus(2254), 61 88 . Filed by Frank E. Gable. (Brown, Nell) (Entered: 04/10/2015)
04/16/2015	91	SCHEDULING ORDER by Judge A costa - SETTING a Telephone Conference regarding Respondent's Motion for Extension of Time 88 for Friday, April 24, 2015, at 10:00AM. The Court will provide the parties with a call-in number by separate email prior to the date of the hearing. Parties are to

E. R.-1399

		be on the line and ready to start promptly at the designated start time. (peg) (Entered: 04/16/2015)
04/24/2015	92	MINUTES of Proceedings: Telephone Status Conference on respondent's motion 88 for extension of time to answer amended petition. ORDER: (1) GRANTING in part motion 88 . Respondent may have up to and including 9/14/15, to file an answer and response to the amended petition. (2) Petitioner may have until 11/13/15 to file a reply to the answer/response of respondent. The amended petition shall be taken UNDER ADVISEMENT as of 11/30/15. Nell Brown, Mark Ahlemeyer present as counsel for petitioner. Nicholas Kallstrom, Samuel K ubernick present as counsel for respondent. (Court Reporter Bonita Shumway.) (peg) (Entered: 04/24/2015)
09/10/2015	93	Unopposed Motion for Extension of Time to Answer Amended Petition for Writ of Habeas Corpus(2254), 61 . Filed by Max Williams. (K ubernick, Samuel) (Entered: 09/10/2015)
09/10/2015	94	Declaration of Samuel A. K ubernick. Filed by Max Williams. (Related document(s): Motion for Extension of Time to Answer a Complaint/Petition 93 .) (K ubernick, Samuel) (Entered: 09/10/2015)
09/14/2015	95	ORDER: Granting Respondent's Motion for Extension of Time to Answer 93 . Answer and response is due by 10/19/2015. Petitioner's reply brief is due by 12/18/2015. Habeas petition is taken under advisement on 1/5/2016. Ordered by Magistrate Judge John V. A costa. (ps1) (Entered: 09/14/2015)
10/15/2015	96	Motion for Extension of Time to Answer Amended Petition for Writ of Habeas Corpus(2254), 61 . Filed by Max Williams. (K ubernick, Samuel) (Entered: 10/15/2015)
10/15/2015	97	Declaration of Samuel A. K ubernick . Filed by Max Williams. (Related document(s): Motion for Extension of Time to Answer a Complaint/Petition 96 .) (K ubernick, Samuel) (Entered: 10/15/2015)
10/19/2015	98	ORDER: Granting Respondent's Motion for Extension of Time to Answer 96 . Answer and Response are due by 11/9/2015. Petitioner's Reply is due 1/8/2016. Habeas Petition is taken UNDER ADVISEMENT 1/25/2016. Respondent is advised that no further extensions of time will be granted. Ordered by Magistrate Judge John V. A costa. (ps1) (Entered: 10/19/2015)
11/09/2015	99	Unopposed Motion to File Excess Pages (titled as Respondent's Unopposed Motion to Exceed Page Limit). Filed by Max Williams. (K allstrom, Nicholas) (Entered: 11/09/2015)
11/09/2015	100	Declaration of Samuel A. K ubernick in Support of Respondent's Unopposed Motion to Exceed Page Limit. Filed by Max Williams. (Related document(s): Motion to File Excess Pages 99 .) (K allstrom, Nicholas) (Entered: 11/09/2015)
11/09/2015	101	Response to Amended Petition and to Brief in Support of Amended Petition. Filed by Max Williams. (Related document(s): Brief in Support of Petition 74 , Amended Petition for Writ of Habeas Corpus(2254), 61 .) (A ttachments: # 1 A ttachment A) (K allstrom, Nicholas) (Entered: 11/09/2015)

E. R.-1400

11/09/2015	102	Answer to A mended Peti tion for Writ of Habeas Corpus(2254), 61 . Filed by Max Williams. (Related document(s): A mended Peti tion for Writ of Habeas Corpus(2254), 61 .) (K allstrom, Nicholas) (Entered: 11/09/2015)
11/09/2015	103	Supplemental Exhibi ts re A nswer 102 . Filed by Max Williams. (A ttachments: # 1 Exhibit 386-394) (K allstrom, Nicholas) (Entered: 11/09/2015)
11/10/2015	104	ORDER: Granting Respondent's Unopposed Motion to File Excess Pages 99 . Ordered by Magi strate Judge John V . A costa. (ps1) (Entered: 11/10/2015)
01/07/2016	105	Unopposed Motion for Extension of Time . Filed by Frank E. Gable. (Brown, Nell) (Entered: 01/07/2016)
01/07/2016	106	Declaration of Nell Brown . Filed by Frank E. Gable. (Related document(s): Motion for Extension of Time 105 .) (Brown, Nell) (Entered: 01/07/2016)
01/11/2016	107	ORDER: Granting Peti tioner's Motion for Extension of Time 105 . Peti tioner's brief is due by 2/12/2016. Habeas Peti tion is taken under advisement as of 2/29/2016. Ordered by Magi strate Judge John V . A costa. (ps1) (Entered: 01/11/2016)
02/12/2016	108	Unopposed Motion for Extension of Time . Filed by Frank E. Gable. (Brown, Nell) (Entered: 02/12/2016)
02/12/2016	109	Declaration of Nell Brown . Filed by Frank E. Gable. (Related document(s): Motion for Extension of Time 108 .) (Brown, Nell) (Entered: 02/12/2016)
02/16/2016	110	ORDER: Granting Peti tioner's Motion for Extension of Time 108 . Peti tioner's brief is due by 3/14/2016. Habeas Peti tion is taken under advisement as of 3/29/2016. Ordered by Magi strate Judge John V . A costa. (ps1) (Entered: 02/16/2016)
03/14/2016	111	Unopposed Motion for Extension of Time . Filed by Frank E. Gable. (Brown, Nell) (Entered: 03/14/2016)
03/14/2016	112	Declaration of Nell Brown . Filed by Frank E. Gable. (Related document(s): Motion for Extension of Time 111 .) (Brown, Nell) (Entered: 03/14/2016)
03/14/2016	113	ORDER: Granting Peti tioner's Motion for Extension of Time 111 . Peti tioner's brief is due by 3/16/2016. Habeas Peti tion is taken under advisement as of 3/31/2016. Ordered by Magi strate Judge John V . A costa. (ps1) (Entered: 03/14/2016)
03/16/2016	114	Reply . Filed by Frank E. Gable. (Related document(s): Response, 101 .) (A ttachments: # 1 Exhibit I, # 2 Exhibit J, # 3 Exhibit K, # 4 Exhibit L, # 5 Exhibit M, # 6 Exhibit N) (Brown, Nell) (Entered: 03/16/2016)
03/16/2016	115	Unopposed Motion for Order to Exceed Page Limit. Filed by Frank E. Gable. (Brown, Nell) (Entered: 03/16/2016)
03/16/2016	116	Motion to A ppear as A micus Curiae by Janis C. Puracal on behalf of Oregon Innocence Project . Filed by on behalf of Oregon Innocence Project (A ttachments: # 1 A ppendix 1) (Puracal, Janis) Modified on 3/28/2016 to make the event a motion .(eo) (Entered: 03/16/2016)

E. R.-1401

03/17/2016	117	ORDER: Granting Petitioner's Unopposed Motion for Order to file over-size brief 115 . Ordered by Magistrate Judge John V. A Costa. (ps1) (Entered: 03/17/2016)
03/24/2016	118	Notice of Attorney Withdrawal: Filed by Max Williams (Kallstrom, Nicholas) (Entered: 03/24/2016)
03/24/2016	119	Unopposed Motion for Leave to File Response to Petitioner's Reply, Unopposed Motion for Extension of Time. Filed by Max Williams. (Kallstrom, Nicholas) (Entered: 03/24/2016)
03/24/2016	120	Declaration of Nick M. Kallstrom. Filed by Max Williams. (Related document (s): Motion for Leave, Motion for Extension of Time 119 .) (Kallstrom, Nicholas) (Entered: 03/24/2016)
03/24/2016	121	Response (Request for Status Conference) to Unopposed Motion for Leave to File Response to Petitioner's Reply Unopposed Motion for Extension of Time 119 . Filed by Frank E. Gable. (Brown, Nell) (Entered: 03/24/2016)
03/25/2016	122	Declaration of Nick M. Kallstrom. Filed by Max Williams. (Related document (s): Motion for Leave, Motion for Extension of Time 119 .) (Kallstrom, Nicholas) (Entered: 03/25/2016)
03/28/2016	123	SCHEDULING ORDER by Judge A Costa - SETTING an in-person Status/Scheduling Conference for Tuesday, April 12, 2016, at 10:30AM, in Portland, Courtroom 11B, before Magistrate Judge John V. A Costa. (peg) (Entered: 03/28/2016)
04/12/2016	124	MINUTES of Proceedings: RECORD OF STATUS HEARING: (1) The Court GRANTS Motion to Appear as Amicus Curiae 116 . Janis C. Puracal on behalf of the Oregon Innocence Project shall have up to and including 4/22/2016 to formally file the proposed Amicus Curiae brief. (2) Respondent shall have until 6/27/2016, to file a response to the Amicus Curiae brief. (3) Petitioner shall have until 7/22/2016, to file any reply. (4) The Court GRANTS Respondent's Motion for Leave to File Sur-Reply and Motion for Extension of Time 119 . (5) Respondent shall have until 7/22/2016, to file a Sur-Reply. (6) The parties shall confer on the testing and/or re-testing of physical evidence within 14 days (4/26/2016). (7) If the parties do not agree on the testing and/or re-testing of all items, Petitioner shall file a motion within 21 days (5/3/2016). (8) Briefing on any such motion shall proceed under the regular court schedule. To the extent the parties agree on the testing and/or re-testing of any physical evidence, the parties shall submit a proposed stipulated order to the Court. (9) This matter is SCHEDULED for a further telephone status conference on 9/20/2016, at 9:30 a.m. (10) FURTHER ORDERED that this matter is SCHEDULED for ORAL ARGUMENT on 11/15/2016, at 9:30 a.m. Nell Brown, Mark Ahlemeyer present as counsel for plaintiff. Nick Kallstrom, Sam Kubernick present as counsel for defendant. Court Reporter: Amanda LeGore. Magistrate Judge John V. A Costa presiding. (peg) (Entered: 04/13/2016)
04/21/2016	125	Amicus Brief. Filed by Oregon Innocence Project. (Puracal, Janis) (Entered: 04/21/2016)
05/03/2016	126	

E. R.-1402

		Motion for Order Regarding DNA Testing. Oral Argument requested. Filed by Frank E. Gable. (Attachments: # 1 Exhibit B) (Brown, Nell) (Entered: 05/03/2016)
05/03/2016	127	Motion for Order to File Petitioner's Exhibit A Under Seal. Filed by Frank E. Gable. (Brown, Nell) (Entered: 05/03/2016)
05/04/2016	128	Declaration of Nell Brown in Support of Motion for Order Regarding DNA Testing. Filed by Frank E. Gable. (Related document(s): Motion for Order 126 .) (Brown, Nell) (Entered: 05/04/2016)
05/05/2016	129	SCHEDULING ORDER by Judge A costa as to Motion for Order Regarding DNA Testing 126 - Oral Argument will be held on this motion on Tuesday, June 28, 2016, at 9:30AM, in Portland, Courtroom 11B, before Magistrate Judge John V. A costa. (peg) (Entered: 05/05/2016)
05/06/2016	130	ORDER: Granting Petitioner's Motion for Order 127 to file Exhibit A to Petitioner's Motion for Order Regarding DNA Testing UNDER SEAL. Access to the document shall be limited to the court, counsel, and the parties. Ordered by Magistrate Judge John V. A costa. (ps1) (Entered: 05/06/2016)
05/06/2016	131	Exhibits A to Motion for Order Regarding DNA Testing 126 (DOCUMENT FILED UNDER SEAL). Filed by Frank E. Gable. (dsg) (Entered: 05/06/2016)
05/17/2016	132	Response to Motion for Order Regarding DNA Testing 126 . Filed by Max Williams. (Kubernick, Samuel) (Entered: 05/17/2016)
05/24/2016	133	Reply to Response to Motion for Order Regarding DNA Testing. Filed by Frank E. Gable. (Related document(s): Response to Motion 132 .) (Brown, Nell) (Entered: 05/24/2016)
06/13/2016	134	ORDER: The court GRANTS Petitioner's Motion for Order Regarding DNA Testing 126 . Petitioner having submitted the attached proposed form "Order Authorizing DNA Testing" which describes the material to be tested, a schedule for the testing, and the protocol for transfer of the evidence to an independent laboratory for testing, Respondent shall have 10 days to inform the court, in writing, of any objection thereto. If no objection is received within the time provided, the court shall issue the Order as proposed. Signed on 6/13/16 by Magistrate Judge John V. A costa. (dsg) (Additional attachment(s) added on 6/16/2016: # 1 Proposed Order) (dsg). (Entered: 06/15/2016)
06/27/2016	135	Response to Brief of Amicus Curiae Oregon Innocence Project. Filed by Max Williams. (Related document(s): Brief 125 .) (Kubernick, Samuel) (Entered: 06/27/2016)
06/27/2016	136	Objection(s) to Form of Order Authorizing DNA Testing. Filed by Max Williams. (Related document(s): Order on motion for Order,, 134 .) (Kubernick, Samuel) (Entered: 06/27/2016)
06/28/2016	137	Response to Respondent's Objections to Form of Order Authorizing DNA Testing. Filed by Frank E. Gable. (Related document(s): Objection 136 .) (Attachments: # 1 Exhibit A) (Brown, Nell) (Entered: 06/28/2016)

E. R.-1403

06/29/2016	138	SCHEDULING ORDER by Judge A costa - SETTING Oral Argument as to the DNA testing protocols for Wednesday, July 6, 2016, at 9.30A M, in Portland, Courtroom 11B, before Magistrate Judge John V . A costa. (peg) (Entered: 06/29/2016)
06/29/2016	139	AMENDED SCHEDULING ORDER by Judge A costa - RESETTING the start time ONLY from 9.30A M to a START TIME of 9.00A M, for Oral Argument as to the DNA testing protocols on Wednesday, July 6, 2016, in Portland, Courtroom 11B, before Magistrate Judge John V . A costa. (peg) (Entered: 06/29/2016)
06/29/2016	140	Reply to Response to Objections to Form of Order Authorizing DNA Testing. Filed by Max Williams. (Related document(s): Response 137 .) (K ubernick, Samuel) (Entered: 06/29/2016)
06/29/2016	141	Declaration of Samuel A. K ubernick . Filed by Max Williams. (Related document(s): Reply 140 .) (K ubernick, Samuel) (Entered: 06/29/2016)
06/29/2016	142	Corrected Declaration of Samuel A. K ubernick . Filed by Max Williams. (Related document(s): Reply 140 .) (K ubernick, Samuel) (Entered: 06/29/2016)
07/06/2016	143	MINUTES of Proceedings: Oral Argument as to the DNA testing protocols heard before Judge A costa. Petitioner's counsel to prepare proposed order regarding DNA protocol and submit to Respondent's counsel by 7/14/16. Respondent's counsel to notify Petitioner's counsel on or before 7/19/16 of agreement with or suggested changes to the proposed order. By 7/27/16, the parties are to submit either one agreed upon proposed order to the court or if they cannot agree, separate proposed orders with brief explanations as to why their particular version should be entered by the court. Nell Brown present as counsel for petitioner. Sam K ubernick, Nick K allstrom present as counsel for respondent. Court Reporter: Jill Jessup. Magistrate Judge John V . A costa presiding. (peg) (Entered: 07/06/2016)
07/08/2016	144	SCHEDULING ORDER by Judge A costa - This matter had been scheduled for oral argument on 11/15/16, by item #10 in the Court's 4/12/16 Order (ECF #124). Due to a conflict the Court RESETS the Hearing on the Habeas Petition from 11/15/16 to Tuesday, November 22, 2016, at 9.30A M, in Portland, Courtroom 11B, before U.S. Magistrate Judge John V . A costa. (peg) (Entered: 07/08/2016)
07/15/2016	145	Unopposed Motion for Extension of Time . Filed by Max Williams. (K ubernick, Samuel) (Entered: 07/15/2016)
07/15/2016	146	Declaration of Samuel A. K ubernick in Support of Unopposed Motion for Extension of Time. Filed by Max Williams. (Related document(s): Motion for Extension of Time 145 .) (K ubernick, Samuel) (Entered: 07/15/2016)
07/15/2016	147	ORDER by Judge A costa - GRANTING Respondent's Unopposed Motion for Extension of Time 145 up to and including 7/27/16, within which to file the sur-reply to petitioners Reply to Response to Brief in Support of Amended Petition for Writ of Habeas Corpus (Docket No. 114). (peg) (Entered: 07/15/2016)

E. R.-1404

07/15/2016	148	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Oral Argument held on July 6, 2016, before Judge John V. A costa, Court Reporter Jill L. Jessup, telephone number (503)326-8191 or email at jill_jessup@ord.uscourts.gov. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through the Court Reporter at (503)326-8191 or email at jill_jessup@ord.uscourts.gov or PACER-See Policy at ord.uscourts.gov. Notice of Intent to Redact Transcript is due by 7/25/2016. Redaction Request due 8/8/2016. Redacted Transcript Deadline set for 8/18/2016. Release of Transcript Restriction set for 10/17/2016. (jjcr) (Entered: 07/15/2016)
07/22/2016	149	Reply to Response to Brief of Amicus Curiae. Filed by Frank E. Gable. (Related document(s): Response 135 .) (Brown, Nell) (Entered: 07/22/2016)
07/25/2016	150	ORDER AUTHORIZING DNA TESTING - IT IS SO ORDERED. DATED this 25th day of July, 2016, by United States Magistrate Judge John V. A costa. (peg) (Entered: 07/26/2016)
07/27/2016	151	Motion to File Excess Pages. Filed by Max Williams. (Kallstrom, Nicholas) (Entered: 07/27/2016)
07/27/2016	152	Declaration of Nick M. Kallstrom. Filed by Max Williams. (Related document(s): Motion to File Excess Pages 151 .) (Kallstrom, Nicholas) (Entered: 07/27/2016)
07/27/2016	153	(Stricken per doc. 162, doc. to be refiled) Reply (titled Surreply to Petitioner's Reply). Filed by Max Williams. (Related document(s): Reply 149 .) (Kallstrom, Nicholas) Modified on 11/21/2016 (kms). (Entered: 07/27/2016)
07/27/2016	154	Exhibits (Second Supplemental) re Reply 153 . Filed by Max Williams. (Attachments: # 1 Exhibit 395 and 396) (Kallstrom, Nicholas) (Entered: 07/27/2016)
07/28/2016	155	SCHEDULING ORDER by Judge A costa - Petitioner is to respond to Respondent's Motion to File Excess Pages 151 no later than 8/3/16; the motion will then be taken under advisement as of 8/3/16. (peg) (Entered: 07/28/2016)
08/03/2016	156	Response in Opposition to Motion to File Excess Pages 151 . Filed by Frank E. Gable. (Brown, Nell) (Entered: 08/03/2016)
08/08/2016	157	Order regarding Respondent's Motion to File Excess Pages 151 .. Respondent's Reply, which is not to exceed five pages, is due by 8/16/2016. Motion is taken under advisement as of 8/16/2016. Ordered by Magistrate Judge John V. A costa. (ps1) (Entered: 08/08/2016)
08/16/2016	158	Response to Petitioner's Request to Strike. Filed by Max Williams. (Related document(s): Response in Opposition to Motion 156 .) (Kallstrom, Nicholas) (Entered: 08/16/2016)
09/15/2016	159	SCHEDULING ORDER by Judge A costa - RESETTING the START TIME ONLY for the Telephone Status Conference on Tuesday, September 20, 2016, from 9:30AM to a START TIME of 10:15AM. The Court will provide the

E. R.-1405

		parties with a call-in number by separate entry. Parties are to be on the line and ready to start promptly at the designated start time. (peg) (Entered: 09/15/2016)
09/20/2016	160	MINUTES of Proceedings Telephone Status Conference held by Judge A costa regarding DNA testing protocol and progress thereof. Nell Brown present as counsel for petitioner. Nicholas K allstrom, Samuel K ubernick present as counsel for respondent Court Reporter: Bonita Shumway. Magistrate Judge John V. A costa presiding. (peg) (Entered: 09/20/2016)
11/14/2016	161	ORDER: This matter is set for hearing 11/22/2016, at 9:30 a.m. The parties should be prepared to address the following issues: (1) the status of the DNA testing and/or results; (2) the necessity and propriety of an evidentiary hearing on the issue of excusing procedural default, whether based upon Schlup v. Delo, 513 U.S. 298 (1995) or Martinez v. Ryan, 132 S. Ct. 1309 (2012). In particular, the parties should address the need for the Court to make witness credibility determinations; (3) the logistics of conducting an evidentiary hearing if necessary, including the need to secure the appearances of witnesses at such a hearing and Petitioner's presence; (4) whether the DNA test results would need to be discussed as part of any evidentiary hearing. Ordered by Magistrate Judge John V. A costa. (ps1) (Entered: 11/14/2016)
11/21/2016	162	ORDER: The Court GRANTS IN PART and DENIES IN PART both Respondent's Motion to Exceed Page Limit (ECF No. 151) and Petitioner's Request to Strike (ECF No. 156). Petitioner's request to strike is GRANTED to the extent that Respondent shall re-file the Sur-Reply, with a page-limit not to exceed 50 pages, which omits the extraneous material noted above. Petitioner's request to strike Exhibit 395 is DENIED. Signed on 11/21/2016 by Magistrate Judge John V. A costa. (kms) (Entered: 11/21/2016)
11/22/2016	163	MINUTES of Proceedings: Oral Argument on issues as directed by the court heard by Judge A costa. ORDER: A revised sur-reply is to be filed no later than 12/19/16. (A ttached to this entry is the Respondent's "slide presentation".) Nell Brown, Mark A hlemeyer present as counsel for petitioner. Nicholas K allstrom, Samuel K ubernick present as counsel for respondent. Court Reporter: Jill Jessup. Magistrate Judge John V. A costa presiding. (A ttachments: # 1 A ttachment Part 2 of Respondent's slide presentation, # 2 A ttachment Part 3 of Respondent's slide presentation) (peg) Modified on 11/28/2016 to correct spelling error. (peg) (Entered: 11/28/2016)
12/19/2016	164	Amended Reply (titled Amended Surreply to Petitioner's Reply). Filed by Max Williams. (Related document(s): Reply 114 .) (K allstrom, Nicholas) (Entered: 12/19/2016)
12/21/2016	165	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Oral Argument held on November 22, 2016, before Judge John V. A costa, Court Reporter Jill L. Jessup, telephone number (503)326-8191 or email at jill_jessup@ord.uscourts.gov. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter before the deadline for Release of Transcript Restriction. A fterwards it may be obtained through the Court Reporter at (503)326-8191 or email at jill_jessup@ord.uscourts.gov or PACER-See Policy at ord.uscourts.gov. Notice of Intent to Redact Transcript

E. R.-1406

		is due by 1/3/2017. Redaction Request due 1/17/2017. Redacted Transcript Deadline set for 1/26/2017. Release of Transcript Restriction set for 3/24/2017. (jjcr) (Entered: 12/21/2016)
04/11/2019	166	Individual Party Consent to Jurisdiction by U.S. Magistrate Judge. (Entered: 04/11/2019)
04/12/2019	167	Full Consent by all Parties to Jurisdiction by US Magistrate Judge. (joha) (Entered: 04/12/2019)
04/18/2019	168	OPINION AND ORDER: Gable's Amended Petition for Writ of Habeas Corpus (ECF No. 61) is GRANTED IN PART and DENIED IN PART. The Amended Petition is GRANTED on the bases that the trial court erred in excluding evidence of third-party guilt and that trial counsel provided ineffective assistance in failing to assert Gables federal due process rights in the face of the trial courts error. The Amended Petition is DENIED on the remaining claims for relief, including Gables claim that trial counsel was ineffective in failing to advise Gable of his ex post facto rights and in failing to raise an ex post facto objection to the sentencing options at the penalty phase, as well as Gables free-standing claim of actual innocence. Gable shall be released from custody unless the State of Oregon elects to retry him within 90 days of the date of this order. A certificate of appealability is GRANTED as to all grounds for relief discussed herein on the basis that Gable has made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Signed on 4/18/2019 by Magistrate Judge John V. A costa. (joha) (Entered: 04/18/2019)
04/18/2019	169	JUDGMENT: Gable's Amended Petition for Writ of Habeas Corpus (ECF No. 61) is GRANTED IN PART and DENIED IN PART. The Amended Petition is GRANTED on the bases that the trial court erred in excluding evidence of third-party guilt and that trial counsel provided ineffective assistance in failing to assert Gable's federal due process rights in the face of the trial court's error. The Amended Petition is DENIED on the remaining claims for relief, including Gable's claim that trial counsel was ineffective in failing to advise Gable of his ex post facto rights and in failing to raise an ex post facto objection to the sentencing options at the penalty phase, as well as Gable's free-standing claim of actual innocence. Gable shall be released from custody unless the State of Oregon elects to retry him within 90 days of the date of this order. A certificate of appealability is GRANTED as to all grounds for relief discussed herein on the basis that Gable has made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Signed on 4/18/2019 by Magistrate Judge John V. A costa. (joha) (Entered: 04/18/2019)
05/15/2019	170	Notice of Appeal to the 9th Circuit from Judgment,,, 169 Filing fee \$505 collected; Agency Tracking ID 0979-5852197: . Filed by Max Williams. (Gutman, Benjamin) (Entered: 05/15/2019)
05/15/2019	171	Motion for Stay . Filed by Max Williams. (Gutman, Benjamin) (Entered: 05/15/2019)
05/16/2019	172	SCHEDULING ORDER regarding Respondent's Motion for Stay 171 - (1) Petitioner's response to this motion is due no later than 6/5/19. (2)

E. R.-1407

		Respondent's reply is limited to 10 pages and is due no later than 6/24/19. (3) The motion to stay 171 is set for oral argument on Tuesday, July 9, 2019, at 9:30AM, in Portland Courtroom 11B, before Magistrate Judge John V. A costa. Ordered by Magistrate Judge John V. A costa. (peg) (Entered: 05/16/2019)
05/16/2019		USCA Case Number and Notice confirming Docketing Record on Appeal re Notice of Appeal 170 . Case Appealed to 9th Circuit Court of Appeals Case Number 19-35427 assigned. (jtj) (Entered: 05/16/2019)
05/17/2019	173	Transcript Designation and Order Form for the hearing held on 9/28/10, 4/24/15, 4/12/16, 9/20/16 before Judge John V. A costa. Court Reporter: Bonita Shumway, Amanda LeGore. regarding Notice of Appeal 170 . Filed by Max Williams. Transcript is due by 6/17/2019. (Gutman, Benjamin) (Entered: 05/17/2019)
05/20/2019	174	Notice of Appeal to the 9th Circuit from Judgment,,, 169 (fee waiver status selected (IFP)) (captioned as Notice of Cross-Appeal). Filed by Frank E. Gable. (Brown, Nell) (Entered: 05/20/2019)
05/21/2019		USCA Case Number and Notice confirming Docketing Record on Appeal re Notice of Appeal 174 . Case Appealed to 9th Circuit Court of Appeals Case Number 19-35436 assigned. (jtj) (Entered: 05/21/2019)
05/21/2019	175	Unopposed Motion for Order to Modify Schedule. Filed by Frank E. Gable. (Brown, Nell) (Entered: 05/21/2019)
05/21/2019	176	Declaration of Nell Brown. Filed by Frank E. Gable. (Related document(s): Motion for Order 175 .) (Brown, Nell) (Entered: 05/21/2019)
05/22/2019	177	ORDER by Judge A costa - GRANTING in PART and DENYING in PART petitioner's unopposed motion 175 to modify the schedule with regard to respondent's motion to stay (ECF #171) as follows: (1) Petitioner's response to this motion is due no later than 5/31/19. (2) Respondent's reply is limited to 10 pages and is due no later than 6/14/19. (3) The motion to stay (ECF #171) will now be heard Wednesday, June 26, 2019, at 9:30AM, in Portland Courtroom 11B, before Magistrate Judge John V. A costa. (peg) (Entered: 05/22/2019)
05/29/2019	178	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Telephone Status Conference held on 4/24/2015 before Judge John V. A costa, Court Reporter Bonita J. Shumway, telephone number 503-326-8188 or bonita_shumway@ord.uscourts.gov. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through the Court Reporter or PACER-See Policy at ord.uscourts.gov. Notice of Intent to Redact Transcript is due by 6/5/2019. Redaction Request due 6/19/2019. Redacted Transcript Deadline set for 7/1/2019. Release of Transcript Restriction set for 8/27/2019. (Shumway, Bonita) (Entered: 05/29/2019)
05/29/2019	179	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Telephone Status Conference held on 9/20/2016 before Judge John V. A costa, Court Reporter Bonita J. Shumway, telephone number 503-326-8188 or bonita_shumway@ord.uscourts.gov. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter before the deadline for

E. R.-1408

		Release of Transcript Restriction. Afterwards it may be obtained through the Court Reporter or PACER-See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 6/5/2019. Redaction Request due 6/19/2019. Redacted Transcript Deadline set for 7/1/2019. Release of Transcript Restriction set for 8/27/2019. (Shumway, Bonita) (Entered: 05/29/2019)
05/31/2019	180	Response to Motion for Stay 171 . Filed by Frank E. Gable. (Brown, Nell) (Entered: 05/31/2019)
05/31/2019	181	Unopposed Motion for Release Pending Appeal. Filed by Frank E. Gable. (Attachments: # 1 Exhibit A , # 2 Exhibit B) (Brown, Nell) (Entered: 05/31/2019)
06/03/2019	182	Scheduling Order by Magistrate Judge John V. A costa regarding Unopposed Motion for Release Pending Appeal 181 . Petitioner shall file a Status Report by 6/12/2019. Ordered by Magistrate Judge John V. A costa. (ps1) (Entered: 06/03/2019)
06/03/2019	183	OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference held on 4/12/2016 before Judge John V. A costa, Court Reporter Amanda LeGore, telephone number 503-752-4555. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. Afterwards it may be obtained through PACER-See Policy at ord.uscourts.gov . Notice of Intent to Redact Transcript is due by 6/10/2019. Redaction Request due 6/24/2019. Redacted Transcript Deadline set for 7/5/2019. Release of Transcript Restriction set for 9/3/2019. (ct) (Entered: 06/03/2019)
06/12/2019	184	Status Report by Frank E. Gable. Filed by Frank E. Gable. (Brown, Nell) (Entered: 06/12/2019)
06/14/2019	185	Reply to Unopposed Motion for Release Pending Appeal 181 . Filed by Max Williams. (Gutman, Benjamin) (Entered: 06/14/2019)
06/25/2019	186	SCHEDULING ORDER by Judge A costa - At request of Petitioner's counsel, the court STRIKES the 6/26/19 hearing from the Court's docket. Hearing, if needed, will be reset at counsel's request. (peg) (Entered: 06/25/2019)
06/25/2019	187	Status Report by Frank E. Gable. Filed by Frank E. Gable. (Brown, Nell) (Entered: 06/25/2019)
06/26/2019	188	Status Report by Max Williams. Filed by Max Williams. (Kallstrom, Nicholas) (Entered: 06/26/2019)
06/27/2019	189	ORDER: The court hereby ORDERS: 1. That the portion of this court's Judgment (ECF No. 169) requiring the State of Oregon to retry Petitioner on the aggravated murder charges within 90 days of the date thereof is hereby STAYED pending resolution of the Respondent's appeal to the United States Court of Appeals for the Ninth Circuit and, if applicable, the United States Supreme Court.

E. R.-1409

		<p>2. Gable shall be released from the Custody of the Oregon Department of Corrections at 10:00 a.m. Central Time on Friday, June 28, 2019.</p> <p>3. Gable's release pending the appeal process shall be supervised by the United States Probation and Pretrial Services Office for the District of Kansas.</p> <p>4. Pursuant to Judge Simon's referral order in Case No. 90-170-SI and the authority granted under 28 U.S.C. § 3603(10), Gable's release pending the appeal process shall be governed by the conditions set forth in the order of release signed by the court on this date.</p> <p>IT IS FURTHER ORDERED that the parties shall confirm and submit a status report to the court within 30 days of the Ninth Circuit's ruling on Respondent's appeal. At that time, the parties shall notify the court whether the stay of the retrial should continue because of any pending Supreme Court litigation, or any other or additional reason.</p> <p>Signed on 6/27/19 by Magistrate Judge John V. A costa. (dsg) (Entered: 06/27/2019)</p>
06/27/2019	190	<p>ORDER SETTING CONDITIONS OF RELEASE IT IS ORDERED that the release of the defendant/petitioner is subject to the following conditions:</p> <p>(1) The defendant/petitioner shall not commit any offense in violation of federal, state or local law while on release in this case.</p> <p>(2) The defendant/petitioner must cooperate in the collection of a DNA sample if the collection is authorized by 42 U.S.C §14135a.</p> <p>(3) The defendant/petitioner shall immediately advise the court through Pretrial Services or defense counsel in writing of any change in address and telephone number.</p> <p>(4) The defendant/petitioner shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant/petitioner shall next appear as directed by U.S. District Court</p> <p>Signed on 6/27/19 by Magistrate Judge John V. A costa. (dsg) (Entered: 06/27/2019)</p>

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06/27/2019 15:20:49			
PACER Login:	peeneshshah: 4386643: 4378390	Client Code:	137603A CO9598-19
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E. R.-1410

Billable Pages	16	Cost:	1.60
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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I directed the Appellant's Excerpts of Record Volumes I, II, III, IV, V, VI, & VII to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin Gutman

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